

Bill II, s. 17: 17. Where an instrument may be construed  
 Bill III, s. 17: either as a promissory note  
 Byles 91: Ambiguous instru- or bill of exchange, the holder  
 Bayley (6th ment, may at his election treat it as  
 edition) 8. either, and the instrument shall be thenceforward  
 treated accordingly.

Draft, s. 2: 18. If the amount undertaken or ordered to be  
 Bill II, s. 18: Where amount is paid is stated differently in  
 Bill III, s. 18: stated differently in figures and in words, the  
 Byles 84: figures and words. amount stated in words shall  
 Bayley 12 be the amount undertaken or ordered to be paid.  
 (Saunderson v. Piper).

Bill II, s. 19: 19. A promissory note or bill of exchange, in  
 Bill III, s. 19: which no time for payment  
 1 Parsons Instruments payable is specified, and a cheque are  
 271: on demand. payable on demand.  
 Byles 13, 212:  
 Aldous v.  
 Cornwell,  
 L. R. 3 Q. B.  
 573.

Bill II, s. 20: 20. Where one person signs and delivers to  
 Bill III, s. 20: another a paper stamped in  
 Byles 88, 165, 188: Inchoate stamped in- accordance with the law re-  
 Foster v. struments. lating to negotiable instru-  
 Mackinnon, ments then in force in British India, and either  
 L. R. 4 C. P. wholly blank or having written thereon an incom-  
 704: plete negotiable instrument, he thereby gives  
 Byles 84. *prima facie* authority to the holder thereof to make  
 or complete, as the case may be, upon it a nego-  
 tiable instrument, for any amount specified therein  
 and not exceeding the amount covered by the  
 stamp. The person so signing shall be liable upon  
 such instrument, in the capacity in which he  
 signed the same, to any holder in due course for  
 such amount: provided that no person other than  
 a holder in due course shall recover from the per-  
 son delivering the instrument anything in excess  
 of the amount intended by him to be paid there-  
 under.

Bill II, s. 23: 21. In a promissory note or bill of exchange  
 Bill III, s. 22: "At sight." the expressions "at sight"  
 Byles 80, 180, "On presentment." and "on presentment" mean  
 206, 209, 528: "After sight." on demand. The expression  
 84 & 35 Vic., "after sight" means, in a promissory note, after  
 c. 74, s. 2. presentment for sight, and, in a bill of exchange,  
 after acceptance, or noting for non-acceptance, or  
 protest for non-acceptance.

Draft, s. 78: 22. The maturity of a promissory note or  
 Bill II, s. 22: bill of exchange is the date  
 Bill III, s. 23. "Maturity." at which it falls due.  
 New. Every promissory note or bill of exchange  
 which is not expressed to be  
 Days of grace. payable on demand, at sight,  
 or on presentment, is at maturity on the third day  
 after the day on which it is expressed to be payable.

Draft, s. 79: 23. In calculating the date at which a pro-  
 Bill II, s. 24: missory note or bill of ex-  
 Bill III, s. 24: change, made payable a  
 Byles 206. Calculating maturity stated number of months  
 of bill or note payable after date or after sight, or  
 so many months after after date or after sight, or  
 date or sight. after a certain event, is at maturity, the period  
 stated shall be held to terminate on the day of  
 the month which corresponds with the day on  
 which the instrument is dated, or presented for  
 acceptance or sight, or noted for non-acceptance, or  
 protested for non-acceptance, or the event happens,  
 or, where the instrument is a bill of exchange made  
 payable a stated number of months after sight  
 and has been accepted for honour, with the day on  
 which it was so accepted. If the month in which  
 the period would terminate has no corresponding

day, the period shall be held to terminate on the  
 last day of such month.

#### Illustrations.

(a). A negotiable instrument, dated 29th January, 1878, is  
 made payable at one month after date. The instrument is  
 at maturity on the third day after the 28th February, 1878.

(b). A negotiable instrument, dated 30th August, 1878, is  
 made payable three months after date. The instrument is  
 at maturity on the 3rd December, 1878.

(c). A promissory note or bill of exchange, dated 31st  
 August, 1878, is made payable three months after date.  
 The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange  
 made payable a certain num-  
 ber of days after date or after  
 sight or after a certain event,  
 is at maturity, the day of the date, or of present-  
 ment for acceptance or sight, or of protest for non-  
 acceptance, or on which the event happens, shall be  
 excluded.

25. When the day on which a promissory note  
 or bill of exchange is at  
 maturity is a public holiday,  
 the instrument shall be  
 deemed to be due on the next preceding business  
 day.

*Explanation.*—The expression "public holiday"  
 includes Sundays: New-Year's day, Christmas day:  
 if either of such days falls on a Sunday, the next  
 following Monday: Good-Friday; and any other  
 day declared by the Local Government, by notifi-  
 cation in the official Gazette, to be a public  
 holiday.

### CHAPTER III.

#### PARTIES TO NOTES, BILLS AND CHEQUES.

26. Every person capable of contracting, accord-  
 ing to the law to which he  
 is subject, may bind himself  
 and be bound by the making,  
 drawing, acceptance, indorsement, delivery and  
 negotiation of a promissory note, bill of exchange  
 or cheque.

A minor may draw, indorse, deliver and negotiate  
 such instruments so as to  
 bind all parties except him-  
 self.

Nothing herein contained shall be deemed to  
 empower a corporation to make, indorse or accept  
 such instruments except in cases in which, under  
 the law for the time being in force, they are so  
 empowered.

27. Every person capable of binding himself or  
 of being bound, as mentioned  
 in section twenty-six, may so  
 bind himself or be bound by a duly authorized agent  
 acting in his name.

A general authority to transact business and to  
 receive and discharge debts does not confer upon  
 an agent the power of accepting or indorsing bills  
 of exchange so as to bind his principal.

An authority to draw bills of exchange does  
 not of itself import an authority to indorse.

28. An agent who signs his name to a promissory note, bill of exchange  
 or cheque, without indicating  
 thereon that he signs as  
 agent, or that he does not intend thereby to incur  
 personal responsibility, is liable personally on the

Draft, s. 80:  
 Bill II, s. 25  
 Bill III, s. 25  
 Byles 206.

Draft, s. 80:  
 Bill II, s. 26  
 Bill III, s. 26  
 Byles 208.

Bill II, s. 38:  
 Bill III, s. 28  
 See 37 & 3  
 Vic., c. 62, s.  
 1 (Byles 529):  
 Byles 59.

Byles 61.

Bill II, s. 39  
 Bill III, s. 29  
 Byles 31.

Byles 32.

Byles 33.

Draft, s. 15:  
 Bill II, s. 40  
 Bill III, s. 30

Art IX of 1872, s. 234. instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Byles 57 : 29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Draft, ss. 17, 30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder under Chapter XII, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

Bill II, s. 45 : 31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque, must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Draft, ss. 60, 32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor of a bill of exchange, are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand. In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him, and caused by such default.

Draft, s. 61 : 33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Draft, s. 59 : 34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Draft, ss. 28, 35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Draft, s. 44. Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

#### Illustration.

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which under section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

#### Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, "B."  
Second indorsement, "Peter Williams."  
Third indorsement, "Wright and Co."  
Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Draft, ss. 63, 71 :  
Bill II, s. 49 :  
Bill III, s. 39 :  
Byles 166 :  
O'Keefe v. Dunn, 6 Taunt. 305 : 5 M. & S. 282.

Bill II, s. 50 :  
Bill III, s. 40 :  
Byles 245.

Bill II, s. 51 :  
Bill III, s. 41 :  
Byles 245.

Bill II, s. 52 :  
Bill III, s. 42 :  
Owen v. Roman, 4 H. L. Cas. 97 :  
Muir v. Crawford, L. R. 2 Sc. App. 456.

Draft, s. 100 :  
Bill II, s. 53 :  
Bill III, s. 43 :  
of Act IX of 1872, s. 137.

Draft, s. 36 :  
Bill II, s. 56 :  
Bill III, s. 47 :  
Byles 200.

Bill II, s. 59 :  
Bill III, s. 48 :  
Byles 201 :  
Cooper v. Mayer, 10 B. & C. 468 :  
Act I of 1872, s. 117.



New.

**43.** A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed, can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Draft, s. 54;  
Bill II, s. 62;  
Bill III, s. 51;  
Byles 130.

**44.** When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

*Explanation.*—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque, stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

#### Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

Draft, s. 55;  
Bill II, s. 63;  
Bill III, s. 52.

**45.** Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

### CHAPTER IV. OF NEGOTIATION.

**46.** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it

may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

**47.** Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

*Exception.*—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

#### Illustrations.

(a). A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated. Draft, s. 18;  
Bill II, s. 64;  
Bill III, s. 53;  
Byles 148.

(b). A, the holder of a negotiable instrument payable to bearer which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it. Byles 148,  
note (i).

**48.** Subject to the provisions of section fifty-eight, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof. Draft, s. 19;  
Bill II, s. 65;  
Bill III, s. 54;  
Denton v. Peters, L.R. 5 Q. B. 475;  
Ex parte Cole, L. R. 9 Ch. App. 27.

**49.** The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser. Draft, s. 31;  
Bill II, s. 68;  
Bill III, s. 57;  
Byles 150,  
151.

**50.** The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person. Draft, ss. 29,  
30;  
Bill II, ss. 69,  
70;  
Bill III, ss. 58, 59;  
Byles 153.

#### Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer:—

(a) "Pay the contents to C only."

(b) "Pay C for my use."

(c) "Pay C or order for the account of B."

(d) "The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

(e) "Pay C."

(f) "Pay C value in account with the Oriental Bank."

(g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

Draft, no. 20, 21, 27.  
Bill II, s. 71.  
Bill III, s. 60.

**51.** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded, as mentioned in section fifty, indorse and negotiate the same.

*Explanation.*—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

*Illustration.*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Draft, no. 32, 34.  
Bill II, s. 72.  
Bill III, s. 61.  
Byles 158, 157.

**52.** The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability or make it conditional. Liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon, depend upon the happening of a specified event, although such event may never happen.

Draft, s. 45.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

*Illustrations.*

(a) The indorser of a negotiable instrument signs his name, adding the words—  
"Without recourse."

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Draft, s. 49.  
Bill II, s. 73.  
Bill III, s. 64.

**53.** A holder of a negotiable instrument who derives title from holder in due course has the rights thereon of that holder in due course.

Draft, s. 25.  
Bill II, s. 74.  
Bill III, s. 63.

**54.** Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Draft, s. 39.  
Bill II, s. 75.  
Bill III, s. 64.

**55.** If a negotiable instrument after having been indorsed in blank is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Draft, s. 23.  
Bill II, s. 76.  
Bill III, s. 65.  
Byles 178.

**56.** No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be endorsed on the instrument, which may then be negotiated for the balance.

Draft, s. 22.  
Bill II, s. 77.  
Bill III, s. 67.  
Byles 174.

**57.** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Draft, no. 52, 53.  
Bill II, s. 79.  
Bill III, s. 68.  
Byles 122, 104.

**58.** When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Draft, s. 43, and part of s. 52.  
Bill II, s. 80.  
Bill III, s. 69.  
Byles 166, 168.

**59.** The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

*Illustration.*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Draft, no. 11, 84.  
Bill II, s. 81.  
Bill III, s. 70.  
Byles 170.

**60.** A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

## CHAPTER V.

### OF PRESENTMENT.

Draft, s. 66.  
Bill II, s. 82.  
Bill III, s. 71.

**61.** A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

Bill II, s. 83.  
Bill III, s. 72.

**62.** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can



after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business-hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Draft, s. 56: 63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.  
Bill II, s. 84: Drawee's time for de-  
Bill III, s. 73: liberation.  
Byes 183.

Draft, s. 133: 64. Promissory notes, bills of exchange and  
Bill II, s. 85: cheques must be presented  
Bill III, s. 74: Presentment for pay-  
ment, for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Byes 216. *Exception.*—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Bill II, s. 86: 65. Presentment for payment must be made  
Bill III, s. 75: during the usual hours of  
Draft, s. 137: business, and, if at a banker's,  
Byes 213. ment, within banking hours.

Draft, s. 133: 66. A promissory note  
Bill II, s. 87: or bill of exchange, made  
Bill III, s. 76: Presentment for pay-  
ment of instrument pay-  
able after date or sight.  
Byes 208, must be presented for payment at maturity.  
213.

Bill II, s. 88: 67. A promissory note payable by instalments  
Bill III, s. 77: must be presented for pay-  
Byes 7. ment of promissory note  
payable by instalments.  
of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Draft, s. 138: 68. A promissory note,  
Bill II, s. 89: bill of exchange or cheque  
Bill III, s. 78: made, drawn or accepted  
Act VI of payable at specified  
1840, s. 1: place and not elsewhere.  
1 & 2 Geo. payable at a specified place  
IV, c. 78: and not elsewhere must, in order to charge any  
(Byes 490). party thereto, be presented for payment at that place.

Draft, ss. 139, 69. A promissory note or bill of exchange made,  
140: drawn or accepted payable  
Bill II, s. 90: Instrument payable  
Bill III, s. 79: at specified place.  
Byes 214. at a specified place must, in  
order to charge the maker or  
drawer thereof, be presented for payment at that place.

Draft, ss. 139, 70. A promissory note or bill of exchange, not  
140, 142: made payable as mentioned  
Bill II, s. 91: in sections sixty-eight and  
Bill III, s. 80: no exclusive place speci-  
fied.  
Byes 214, for payment at the place of business (if any), or at  
215. the usual residence, of the maker, drawee or  
acceptor thereof, as the case may be.

Draft, s. 141: 71. If the maker, drawee or acceptor of a  
Bill II, s. 92: negotiable instrument has  
Bill III, s. 81: no known place of business  
or fixed residence, and no  
place is specified in the in-  
strument for presentment for acceptance or pay-

ment, such presentment may be made to him in person wherever he can be found.

72. A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.  
Presentment of cheque to charge drawer.  
Bill II, s. 93  
Bill III, s. 82  
Byes 21, 210.  
Byes 20.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.  
Presentment of cheque to charge any other person.  
Bill II, s. 94  
Bill III, s. 83  
Byes 21.

74. Subject to the provisions of section thirty-one, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.  
Presentment of in-strument payable on demand.  
Draft, s. 134  
Bill II, s. 95  
Bill III, s. 84  
Byes 211.

75. Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.  
Presentment by or to agent, representative of deceased, or assignee of insolvent.  
Bill II, s. 96  
Bill III, s. 85  
Parsons 500.

76. No presentment for payment is necessary, when presentment and the instrument is dishonoured at the due date for presentment, in any of the following cases:—  
Draft, ss. 89, 91:  
Bill II, s. 98  
Bill III, s. 86  
Byes 218.

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or, if the instrument being payable at his place of business, he closes such place on a business day during the usual business-hours, or

if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business-hours, or

if the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument,

or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Terry v. Parker, 6 Ad. & E. 502:  
Wright v. Austin, L. R. 10 C. P. 689

77. When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.  
Liability of banker for negligently dealing with bill presented for payment.  
Draft, s. 83  
Bill II, s. 99  
Bill III, s. 8  
Byes 197.

## CHAPTER VI.

## OF PAYMENT AND INTEREST.

78. Subject to the provisions of section eighty-two, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

To whom payment should be made.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532, be calculated at the rate of six per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs.

*Explanation.*—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

## CHAPTER VII.

## OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

(a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

(b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;

(c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder.

85. Where a cheque payable to order, purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder, they assent to such acceptance.

*Explanation.*—An acceptance is qualified—

(a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order, it undertakes the payment at a specified place and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Save as provided in sections twenty, forty-nine, eighty-six and one hundred and twenty-five, any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections twenty, forty-nine, eighty-six and one hundred and twenty-five.

88. An acceptor or indorser of a negotiable instrument is bound notwithstanding acceptance or indorsement notwithstanding any previous alteration of the instrument.



**89.** Where a promissory note, bill of exchange or cheque has been materially altered, but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

**90.** If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

## CHAPTER VIII.

### OF NOTICE OF DISHONOUR.

**91.** A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

**92.** A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawee of the cheque makes default in payment upon being duly required to pay the same.

**93.** When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

**94.** Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business, or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

**95.** Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section ninety-three.

**96.** When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

**97.** When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

**98.** No notice of dishonour is necessary—

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer, when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers, when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

## CHAPTER IX.

### OF NOTING AND PROTEST.

**99.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

**100.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

les 261.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Draft, s. 122;  
Bill II, s. 124;  
Bill III, s. 11;  
Byles 261.

Contents of protest.

101. A protest under section one hundred must contain—

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

Draft, s. 124;  
Bill II, s. 125;  
Bill III, s. 112;  
Byles 262.

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead

of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Bill II, s. 126;  
Bill III, s. 113;  
Act VI, 1840, s. 4;  
2 & 3 Wm. IV, c. 96.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and

which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Draft, s. 108;  
Bill II, s. 139;  
Bill III, s. 128.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

## CHAPTER X.

## OF REASONABLE TIME.

Draft, s. 56,  
Explan. 1;  
Bill II, s. 127;  
Bill III, s. 114;  
Byles 182,  
210, 287.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and in calculating such time, public holidays shall be excluded.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Draft, s. 129;  
Bill II, s. 129;  
Bill III, s. 116;  
Byles 284.

Byles 285.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

Draft, s. 131;  
Bill II, s. 130;  
Bill III, s. 117.

## CHAPTER XI.

## OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

Draft, ss. 74,  
76;  
Bill II, s. 131;  
Bill III, s. 118;  
Byles 265,  
266.

An acceptor *supra protest* must personally appear before a notary public with two or more witnesses, and declare that he accepts, under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour, and that he will satisfy the same at the appointed time; and then must subscribe the bill with his own hand.

Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour, and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.

109. A person desiring to accept for honour must, in the presence of a notary public, subscribe the bill with his own hand, and declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour; and such declaration must be recorded by the notary in his register.

New.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Draft, s. 75;  
Bill II, s. 132;  
Bill III, s. 119;  
Byles 265,  
266.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

Draft, s. 77;  
Bill II, s. 133;  
Bill III, s. 120;  
Byles 267.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill

Draft, s. 845;  
Byles 268;  
Act VI of 1840, s. 3.



is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

Draft, s. 95 : 112. An acceptor for honour cannot be charged  
Bill II, s. 134 : When acceptor for hon- unless the bill has at its  
Bill III, s. 121. our may be charged. maturity been presented  
to the drawee for payment and has been dishonoured by him, and noted or protested for such dishonour.

Draft, s. 96 : 113. When a bill of exchange has been noted or  
Bill II, s. 135 : Payment for honour. protested for non-payment,  
Bill III, s. 122 : any person may pay the same  
Byles 270. for the honour of any party liable to pay the same, provided that the person so paying has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Draft, s. 97 : 114. Any person so paying is entitled to all the  
Bill II, s. 136 : Right of payer for rights, in respect of the bill,  
Bill III, s. 123 : honour. of the holder at the time of  
Byles 271. such payment, and may recover from the party  
In re Overend, for whose honour he pays all sums so paid, with  
Gurney & Co., interest thereon and with all expenses properly  
L. R. 3, Eq. incurred in making such payment.  
344.

Draft, s. 73 : 115. Where a drawee in case of need is named  
Bill II, s. 138 : Drawee in case of in a bill of exchange, or  
Bill III, s. 127 : need. in any endorsement thereon,  
Byles 266. the bill is not dishonoured until it has been dishonoured by such drawee.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

## CHAPTER XII. OF COMPENSATION.

Bill II, s. 137 : 117. The compensation payable in case of dis-  
Bill III, s. 124. honour of a promissory note,  
Rules as to compensa- bill of exchange or cheque,  
tion. by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532) be determined by the following rules :—

Draft, s. 65 : (a) The holder is entitled to the amount due  
Byles 415. upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;

(b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;

(c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;

(d) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;

(e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him together with all expenses properly incurred by him. Such bill must be accom-

panied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

## CHAPTER XIII.

### SPECIAL RULES OF EVIDENCE.

Presumptions as to 118. Until the contrary is proved, the following pre-  
negotiable instruments sumptions shall be made :—  
Draft, s. 12 :  
Bill II, s. 27 :  
Bill III, s. 26 :  
Byles 3, 119.

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration :

(b) that every negotiable instrument bearing a date was made or drawn on such date :

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity :  
Byles 190.

(d) that every transfer of a negotiable instrument was made before its maturity :  
Byles 170.

(e) that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon :  
Draft, s. 37.

(f) that a lost promissory note, bill of exchange or cheque was duly stamped :  
Byles 117, 382.

(g) that the holder of a negotiable instrument is a holder in due course :  
Draft, s. 12 :  
Byles 122.  
that holder is a holder in due course. provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

119. In a suit upon an instrument, which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.  
Draft, s. 121,  
123 :  
Act V of 1866,  
s. 13.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.  
Bill II, s. 34 :  
Bill III, s. 44 :  
Phillips v. Im Thurn 18, C. B., N. S. 694.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.  
Bill II, s. 56 :  
Bill III, s. 45 :  
Byles 200.

*Draft, s. 35:* 122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

*Bill II, s. 57:* Estoppel against deny-  
*Bill III, s. 46:* ing signature or capacity  
*Byles 153,* of prior party.  
*See Byles 222,*  
*s. (d).*

## CHAPTER XIV.

## OF CROSSED CHEQUES.

*Bill II, s. 30:* 123. Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

*Bill III, s. 229:* Cheque crossed gener-  
*Bill 40 Vic.,* ally.  
*s. 81, s. 4.*

*Bill II, s. 31:* 124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

*Bill III, s. 230:* Cheque crossed spe-  
*Bill 40 Vic.,* cially.  
*s. 81, s. 4.*

*Bill II, s. 32:* 125. Where a cheque is uncrossed, the holder may cross it generally or specially.

*Bill III, s. 231:* Crossing after issue.  
*Bill 40 Vic.,*  
*s. 81, s. 5.*

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

*Draft, ss. 102,* 126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

*Bill II, s. 33:* Payment of cheque  
*Bill III, s. 232:* crossed generally.  
*Bill 40 Vic.,*  
*s. 81, s. 7.*

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

*Bill II, s. 34:* 127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

*Bill III, s. 233:* Payment of cheque  
*Bill 40 Vic.,* crossed specially more  
*s. 81, s. 7.* than once.

*Bill II, s. 35:* 128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

*Bill III, s. 234:* Payment in due  
*Bill 40 Vic.,* course of crossed cheque.  
*s. 81, s. 7.*

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

*Bill II, s. 36:* Payment of crossed  
*Bill III, s. 135:* cheque out of due  
*S. 10.* course.

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

*Bill II, s. 37:* Cheque bearing "not  
*Bill III, s. 136:* negotiable."  
*S. 12.* or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

*48 L. J. C. P.* Non-liability of banker  
*s. 529.* negligence received payment  
receiving payment of for a customer of a cheque  
cheque. crossed generally or specially

## CHAPTER XV.

## OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Draft, ss. 11,* each part being numbered  
*Bill II, s. 28:* and containing a provision  
*Bill III, s. 125:* that it shall continue payable only so long as the  
*Byles 397,* others remain unpaid. All the parts together  
*s. 391.* make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception.*—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

*Byles 92:* When a person accepts or indorses  
*Holdsworth v.* different parts of the bill in favour of different  
*Hunter, 10 B.* persons, he and the subsequent indorsers of each  
*& C. 149.* part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

*Bill II, s. 29:* As between holders in due course of dif-  
*Bill III, s. 126:* ferent parts of the same set, he who first acquired title to  
*Byles 391:* his part is entitled to the  
*Bayley 30,* other parts and the money represented by the  
*s. 171.* bill.

## CHAPTER XVI.

## OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

*Draft, s. 104:* In the absence of a contract to the con-  
*Bill II, s. 140:* trary, the liability of the  
*Bill III, s. 137:* maker or drawer of a foreign  
*Byles 399:* promissory note, bill of ex-  
*Rouquette v.* change or cheque is regulated  
*Oswarman, L.* in all essential matters by the law of the place  
*R. 40 Q. B.* where he made the instrument, and the respective  
*s. 525:* liabilities of the acceptor and indorser by the law  
*Horne v.* of the place where the instrument is made pay-  
*Rouquette, 3* able.  
*Q. B. Div.*  
*s. 514.*



*Illustration.*

Style 402.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Draft, s. 105;  
Bill II, s. 141;  
Bill III, s.  
138.

**135.** Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

*Illustration.*

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Draft, s. 106;  
Bill II, s. 142;  
Bill III, s.  
139.

**136.** If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or endorsement made thereon in British India.

Draft, s. 107;  
Bill II, s. 143;  
Bill III, s.  
140;  
Act I of 1872,  
s. 4.

**137.** The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

## SCHEDULE.

## (a)—STATUTES.

Year and chapter.	Title.	Extent of repeal.
9 Wm. III. c. 17	An Act for the better payment of Inland Bills of Exchange.	The whole.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon promissory notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.	The whole.

## (b)—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

No. and year.	Title.	Extent of repeal.
VI of 1840 ...	An Act for the amendment of the law concerning the negotiation of Bills of Exchange.	The whole.
V of 1866 ...	An Act to amend in certain respects the Commercial Law of British India.	Sections 11, 12 and 13.
XV of 1874 ...	The Laws Local Extent Act, 1874	The first schedule, so far as relates to Act VI of 1840 and Act V of 1866, sections 11, 12 and 13.

D. FITZPATRICK,  
Secy. to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

(Third Publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 28th January, 1881, and was referred to a Select Committee:—

## No. 3 or 1881.

*A Bill for the amendment of the law relating to Insolvent Debtors in India.*

WHEREAS it is expedient to amend the law relating to Insolvent Debtors in India; It is enacted as follows:—

1. This Act may be called "The Insolvent Law Amendment Act, 1881."

Local extent. it extends to the whole of British India; and

it shall come into force on the first day of Commencement. April 1881.

2. In this Act, unless there be something repugnant in the subject or context,—

the word "Insolvent" means a person of whose property a receiver has been appointed under the Code of Civil Procedure, section 351, a person upon whose petition a vesting order has been made under the seventh section of the eleventh and twelfth of Victoria, Chapter XXI, entitled an Act to consolidate and amend the laws relating to Insolvent Debtors in India, and a person who has been adjudged to have committed an act of insolvency under the provisions of section eight or under the provisions of the ninth section of the same Act:

the word "adjudication" means the order under the said section 351 of the said Code appointing a receiver, a vesting order under the said seventh section of the said Act, and an order under the said eighth section or under the said ninth section of the said Act adjudging any person to have committed an act of insolvency; and

the word "assignee" means the person in whom the property of any Insolvent has been vested by the adjudication of such Insolvent.

3. If, at the time of the adjudication of any insolvent, any of his property has been attached in execution of any decree or under any order for attachment before judgment,

the Court, under whose order such property has been attached, shall withdraw the attachment and permit his assignee to take possession of the same.

If, before the Court has had notice of such insolvency, the attached property has been sold, the proceeds of the sale, after deducting the costs of the attachment and sale and all other necessary costs incurred in and about the realization of such proceeds, shall be paid to the assignee of such insolvent:

Provided, that in case the Court has not had notice of the adjudication of such insolvent, before such proceeds are distributed, the same shall not, merely on account of such adjudication, be recalled from the persons to whom they have been paid.

When the Court withdraws the attachment, it may, if it think fit, direct that the proper and necessary costs of the attachment and of the preservation of the property attached shall be charged upon the proceeds of such property; and if such order be made, the assignee shall apply the proceeds of such sale in payment of such costs after payment of the costs of such sale, but in priority to payment of all debts of the insolvent payable out of such proceeds.

4. No property which, under the provisions of the twenty-third section of the said Act would be deemed to be the property of such insolvent, shall be held to have been taken out of his order and disposition by reason only that such property has, before the adjudication of such insolvent, been attached in execution of a decree or under any order for an attachment before judgment.

5. Whenever any persons trading in partnership together have, by the consent and permission of the true owner thereof, in their possession, order or disposition, goods or chattels whereof such persons are reputed owners, or whereof they have taken upon them the sale, alteration or disposition as owner, and while they have such possession, order or disposition, any of such persons is, under the provisions of the said Act, adjudicated an insolvent, or obtains a vesting order on his petition, such goods and chattels shall be deemed to be the property of such partnership so as to become vested in the Official Assignee of the Insolvent Court by the order made in pursuance of the said Act for the purpose only, and so far as may be required, for the purpose of paying the joint creditors of the said partnership.

6. Whenever any person who carries on trade within the local limits of the Ordinary Original Civil Jurisdiction of any of the



High Courts at Calcutta, Madras or Bombay is, under the provisions of section 351 of the Code of Civil Procedure, declared to be an insolvent, the Insolvent Court in any of the said towns in which he may carry on business at the time he is so declared to be an insolvent, may, if it think fit, on the application of any creditor of such trader, adjudge him to have committed an act of insolvency:

such adjudication shall have the same force and effect as if he had, under the provisions of the eighth section of the said Act, been adjudicated an insolvent by such Court, at the time when he was declared to be an insolvent under the provisions of the said Code;

and all the estate and effects of such insolvent shall, unless the said Court otherwise directs, vest in the Official Assignee of such Court,

and any person appointed receiver under the provisions of the said Code shall, unless such Court otherwise directs, thereupon make over to the Official Assignee all the property of the insolvent which may have come to his hands as such receiver;

Provided that no such adjudication shall avoid, or in any way affect, any dealing of such receiver

with any of such property before he has notice of such adjudication.

7. The assignee of each insolvent estate shall, on the expiration of six months from the declaration of any dividend, file in Court an account upon oath of every dividend remaining in his hands unclaimed, specifying the name of each creditor to whom each such dividend is due, as well as the amount of the debt due to each such creditor, and shall publish the same in the numbers of the local Gazette as are first and second successively printed next after such six months, and all dividends remaining unclaimed for a period of six years shall, after the second of such advertisements, revert to the general fund of each respective estate for re-distribution by the Official Assignee among the remaining creditors of such estate.

All such unclaimed dividends shall remain under the control and management of the Official Assignee pending payment and distribution in such manner as shall be prescribed and furnished by any rules to be made under the powers conferred by section seventy-six of the said Act.

### STATEMENT OF OBJECTS AND REASONS.

THE Indian Insolvent Acts, following the analogy of the law of Bankruptcy in England at the time of the first of these Acts being passed, contained no provision for compelling the property of an insolvent, which had been attached in execution before his adjudication, to be distributed among the general body of his creditors. The later English Bankrupt Acts, however, provide for the distribution amongst the bankruptcy creditors of the proceeds of the execution if a petition be filed within fourteen days after the sale; thus securing, as far as possible, equality among creditors, a purpose which the Civil Procedure Code has generally in view; and one of the objects of this Bill is to give that equality of distribution, wherever the property attached has not actually been distributed among the attaching creditors.

The only power which the Insolvent Court now has to stay proceedings in execution does not arise till the Insolvent's schedule has been filed, and in the cases where the insolvent is friendly to the execution creditor, the filing of the schedule is invariably delayed for the purpose of giving him an advantage.

Further, the Code empowers Courts to attach the property of a defendant in cases where there is reason to believe that he is likely to make away with that property in fraud of the plaintiff. Under the language of the old Civil Procedure Code it was held that property so attached before judgment vested in the Official Assignee of the defendant, and was assets of his estate giving no preferential claim to the attaching creditor, but it has been successfully contended that the effect of the new Code, section 490, is to give to a creditor attaching before judgment priority over the assignee, even though the adjudication were before judgment obtained by the attaching creditor.

The third section of the Bill is intended to provide for the rateable distribution of the insolvent's property amongst his creditors in cases where the modern English law would so distribute it, instead of allowing one creditor to sweep away the whole or a large portion of the assets.

From a very early period the Bankruptcy law of England provided that persons who, by leaving goods in the hands of traders, enabled them to maintain a false appearance of wealth and thus obtain credit, could not claim such goods from the assignee of the bankrupt; and this provision was introduced into this country by the Insolvent Act. There was nothing, however, to give similar rights to execution-creditors, and therefore this anomaly occurred that, where an attachment was laid on goods in the hands of a person who became insolvent, the custody of the law took the goods out of the order and disposition of the bankrupt, so that a subsequent adjudication did not vest the goods in the assignee, but the attaching creditor was not able to treat the ostensible ownership of the judgment-debtor as giving him any claims. It is not easy to see any sound basis for this distinction, the injurious influence of which is, to some extent, obviated in England by the Bills of Sale Act. The fourth section is intended to avoid this anomaly.

Down to a very recent period it was generally supposed that where moveable property was in the possession and ostensible ownership of a partnership a member of which became bankrupt, the provisions of the Bankrupt Law vested such property in the assignee; it was however decided in *ex parte Dorman L. R. 8 Ch., App. 51*, that such was not the effect of the language

of the Acts upon the ground that it could not be the intention of the Statute to give such rights where the other partners were solvent. The Appellate Court however was of opinion that where the firm is in fact insolvent, the case comes within the mischief against which the order and disposition clause is intended to provide, and in this country it has been decided that the existence of an absent partner does not prevent the provisions of that clause attaching. The fifth section is intended to apply the order and disposition clause to such cases as fall within the mischief which it is intended to prevent.

Much of the trade of the Presidency-towns is carried on by Gumáshtas on behalf of persons residing in remote parts of the Mufassal, and in many cases, if such traders became insolvent, they might be able, by taking advantage of the insolvency proceedings in the Procedure Code,\* to embarrass their general trade-creditors who would have much difficulty in supervising the proceedings in a Mufassal Court. The sixth section is intended to enable the creditors of such persons to have the liquidation of their affairs transferred to a Court with machinery better organised for the administration of bankrupt estates in cases where such a course is deemed by the Court to be expedient.

Sums in the aggregate considerable, though, in general, individually small, are from time to time left unclaimed in the hands of the official assignee, and so long ago as 1841 an Act was passed empowering the official assignee after the lapse of six years to distribute the amount of such unclaimed dividends rateably among the creditors who had proved the claims.

The language of this Act, however, was so singularly framed that it seems impossible that there ever could be a distribution made of such unclaimed dividends. The seventh section is intended to correct this.

\* It was found some years ago in England that similar powers given to Scotch Courts were applied to the detriment of English creditors, and a modification of the Scotch Law was enacted to prevent its application to persons whose creditors were principally in another part of the United Kingdom, see 23 & 24 Vic., c. 33.

*The 23rd January, 1881.*

J. PITT-KENNEDY.

D. FITZPATRICK,  
*Secy. to the Govt. of India.*





# The Gazette of India.

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CALCUTTA, SATURDAY, FEBRUARY 19, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th February, 1881, and was referred to a Select Committee:—

No. 4 of 1881.

*A Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction.*

WHEREAS it is expedient to provide for the due record of evidence taken by the High Courts in the exercise of their original civil jurisdiction; It is enacted that the Chief Justice of each of the High Courts shall, from time to time, until rules for taking evidence in such Court shall have been made under section 633 of the Civil Procedure Code, appoint some person in each division of the Court exercising original civil jurisdiction to record the evidence taken in such division; and the person so to be appointed shall take down the evidence of each witness in English in the words in which the same is delivered, or, if it be not delivered in English, as interpreted, not ordinarily in the form of question and answer, but in that of a narrative; and when such record is completed the same shall be read over to the witness, and, if necessary, interpreted to him; and the witness may correct his deposition and shall sign it.

The Judge may make a memorandum of such parts of the evidence as he thinks material, and such memorandum may, if the Judge thinks fit, be annexed to and form part of the record.

### STATEMENT OF OBJECTS AND REASONS.

In the High Court in Calcutta no rules for taking evidence have been framed under the provisions of section 633 of the Civil Procedure Code, but in that Court, as well as in the High Court at Madras, the practice has been to have the evidence recorded in the manner provided in this Bill. As, however, this practice was not sanctioned by any express rule or enactment, one or two Judges have thought themselves justified in disregarding it. This has been found inconvenient, tending to cause great delay in the trial of causes, creating difficulty in proof of perjury and depriving the appellate Court of a complete report of the evidence given in the original Court.

The object of the Bill is to give a legal sanction to the practice heretofore prevailing, until the Judges shall see fit to make rules providing some other mode of recording the evidence.

J. PITT KENNEDY.

The 14th February, 1881.

D. FITZPATRICK,  
Secretary to the Govt. of India.



# The Gazette of India.

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## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th February, 1881, and was referred to a Select Committee :—

No. 4 OF 1881.

*A Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction.*

WHEREAS it is expedient to provide for the due record of evidence taken by the High Courts in the exercise of their original civil jurisdiction; It is enacted that the Chief Justice of each of the High Courts shall, from time to time, until rules for taking evidence in such Court shall have been made under section 633 of the Civil Procedure Code, appoint some person in each division of the Court exercising original civil jurisdiction to record the evidence taken in such division; and the person so to be appointed shall take down the evidence of each witness in English in the words in which the same is delivered, or, if it be not delivered in English, as interpreted, not ordinarily in the form of question and answer, but in that of a narrative; and when such record is completed the same shall be read over to the witness, and, if necessary, interpreted to him; and the witness may correct his deposition and shall sign it.

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The object of the Bill is to give a legal sanction to the practice heretofore prevailing, until the Judges shall see fit to make rules providing some other mode of recording the evidence.

J. PITT KENNEDY.

The 14th February, 1881.

D. FITZPATRICK,  
Secretary to the Govt. of India.





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## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th February, 1881, and was referred to a Select Committee:—

No. 4 of 1881.

*A Bill to provide for recording evidence taken by the High Courts in the exercise of their original civil jurisdiction.*

WHEREAS it is expedient to provide for the due record of evidence taken by the High Courts in the exercise of their original civil jurisdiction; It is enacted that the Chief Justice of each of the High Courts shall, from time to time, until rules for taking evidence in such Court shall have been made under section 633 of the Civil Procedure Code, appoint some person in each division of the Court exercising original civil jurisdiction to record the evidence taken in such division; and the person so to be appointed shall take down the evidence of each witness in English in the words in which the same is delivered, or, if it be not delivered in English, as interpreted, not ordinarily in the form of question and answer, but in that of a narrative; and when such record is completed the same shall be read over to the witness, and, if necessary, interpreted to him; and the witness may correct his deposition and shall sign it.

The Judge may make a memorandum of such parts of the evidence as he thinks material, and such memorandum may, if the Judge thinks fit, be annexed to and form part of the record.

### STATEMENT OF OBJECTS AND REASONS.

In the High Court in Calcutta no rules for taking evidence have been framed under the provisions of section 633 of the Civil Procedure Code, but in that Court, as well as in the High Court at Madras, the practice has been to have the evidence recorded in the manner provided in this Bill. As, however, this practice was not sanctioned by any express rule or enactment, one or two Judges have thought themselves justified in disregarding it. This has been found inconvenient, tending to cause great delay in the trial of causes, creating difficulty in proof of perjury and depriving the appellate Court of a complete report of the evidence given in the original Court.

The object of the Bill is to give a legal sanction to the practice heretofore prevailing, until the Judges shall see fit to make rules providing some other mode of recording the evidence.

J. PITT KENNEDY.

The 14th February, 1881.

D. FITZPATRICK,  
Secretary to the Govt. of India.

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee:—

No. 5 OF 1881.

*A Bill to amend the Indian Penal Code.*

For the purpose of amending the Indian Penal Code; It is hereby enacted as follows:—

1. In the second clause of section 40 of the said Code, before the figure "109," the figures "65, 66, 71" shall be inserted.

2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely:—

"In every case punishable under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case punishable under this Code with fine only, in which the offender is sentenced to a fine,"

3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted.

4. To section 71 of the said Code, the following clause shall be added:—

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

5. In section 214 of the said Code, for the Exception, the following shall be substituted, namely:—

"Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

6. In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely:—

"or (where the property is agricultural produce) ten rupees or upwards."

## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to make six amendments of the Indian Penal Code.

The first is to render the word "offence," as used in sections 65, 66 and 71 (as amended by this Bill), applicable to things punishable under the Code or any special or local law.

The second is to render section 64 (as to sentence of imprisonment on default of payment of fine) applicable to convictions under special and local laws in case of offences punishable both with imprisonment and fine. It corresponds with the first clause of section 309 of Act X of 1872, which will be repealed by the new Code of Criminal Procedure.

The third is to declare that, when an offence is punishable with fine only, the imprisonment in default of payment of the fine shall be simple: this is in accordance with a decision of the Bombay High Court (5 Bom. C. C. 55).

The fourth is to declare, by an addition to section 71, that, when anything is an offence falling within two or more separate definitions, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. This corresponds with the latter part of the second clause of section 454 of the present Code of Criminal Procedure; but it is clearly matter of substantive law, and should therefore be placed in the Penal Code.

The fifth is to replace the obscure Exception which now stands in section 214 by the following:—

"Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

This will be read with section 345 of the new Code of Criminal Procedure, which declares that certain specified offences, and no others, may be compounded.

The sixth is to render the offence of committing mischief by fire, intending to cause damage to agricultural produce worth ten rupees or upwards, cognizable by the police and punishable with the severer penalty provided by section 435 of the Code. As the law stands, mischief by fire is cognizable only when committed with intent to cause damage to the amount of Rs. 100 or upwards. But agricultural holdings are generally so small that the total produce of a holding is often less than Rs. 100. The result is that a raiyat may have garnered his crop and lose the whole of it through the act of an incendiary, and yet the offence is only punishable with three months' imprisonment and fine, and may not be investigated by the police without the special order of a Magistrate.

WHITLEY STOKES.

D. FITZPATRICK,

Secy. to the Govt. of India.

The 20th February, 1881.



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee:—

No. 6 of 1881.

## MERCHANT SHIPPING BILL, 1881.

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*A Bill for the further amendment of the law relating to Merchant Shipping.*

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers;

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title.

1. This Act may be called "The Indian Merchant Shipping Act, 1881;"

Extent.

It extends to the whole of British India;

Commencement.

and it shall come into force at once.

2. The Indian Merchant Shipping Act, 1875, and Act No. XIII of 1878

*(An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1875), are hereby repealed,*

But all proceedings commenced, officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively commenced, appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Interpretation-clause.

3. In this Act

"ship" includes every description of vessel used in navigation not propelled by oars; and

"master" means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

4. Nothing in this Act affects the powers conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of Act No. I of 1859 *(for the amendment of the law relating to Merchant Shipping)*, on Courts having admiralty jurisdiction in India.

The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction.

## CHAPTER II.

### INVESTIGATIONS INTO CASUALTIES AFFECTING SHIPS, AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

5. Nothing in this chapter shall be deemed to apply to any ship belonging to, or in the service of, Her Majesty or belonging to any foreign Prince or State.

6. Whenever any Magistrate, or any officer appointed by the Local Government in this behalf, receives credible information that—

(a) any ship has been lost, abandoned, stranded or damaged on or near the coasts of British India; or

(b) by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life has ensued; or

(c) any ship has caused loss or damage to any other ship on or near such coasts; or

(d) any such loss, abandonment, stranding, damage or casualty has happened elsewhere, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(e) any ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

he shall forthwith report in writing such information to the Local Government.

In the cases mentioned in clauses (a), (b) and (c), the master, pilot, harbour-master or other person in charge of the ship or (where two ships are concerned) in charge of each ship, at the time of such loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in British India, the master of such ship at the time she arrives at such place,

shall, on arriving in British India, give immediate notice of such loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port, to the officer appointed at such port as aforesaid.

Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

7. If in any such case a formal investigation into the facts mentioned in section six, clause (a), (b), (c), (d) or (e), appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct such Court to make such investigation, and may fix the place for making the same.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

8. Every Court having admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government, to make the investigations referred to in section seven.

See Act IV of 1875, s. 3, and section 81 of the Bill which afterwards became Act VII of 1880.

See Act IV of 1875, s. 4.

See Act IV of 1875, s. 5.

Cf. Act IV of 1875, s. 23; Act XV of 1863, s. 10; Act XXVIII of 1861, s. 2.

See Act XIII of 1878, s. 4.



**9. Any Court making an investigation under**

Power to inquire into charges against masters, mates and engineers. section seven or section eight may inquire into any charge of incompetency or misconduct arising, in the course of such investigation, against any master, mate or engineer holding a certificate granted, under any enactment for the time being in force, by the Board of Trade or a Local Government, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

In every case in which there is reason to believe that any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, will arise against any such master, mate or engineer in the course of an investigation, the Court shall, if practicable, before the commencement of such investigation, cause to be furnished to him a copy of the report upon which such investigation has been directed.

**10. If the Local Government has reason to believe**

Local Government may direct investigation in cases of incompetency or misconduct. that there are grounds for charging any such master, mate or engineer with incompetency or misconduct, otherwise than in the course

of an investigation under section seven or section eight, it may transmit a statement of the case to any Court mentioned in section eight, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct such Court to make an investigation into such charge.

Before commencing such investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement so transmitted by the Local Government.

**11. For the purpose of an investigation under**

Person accused to be heard. this chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

**12. For the purpose of any investigation under**

Powers of Courts as to evidence and regulating proceedings. this chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(a) if such Court is a special Court—the same powers as are exercisable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;

(b) if such Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exercisable by such Court in the exercise of such admiralty or criminal jurisdiction (as the case may be).

And every Court making any such investigation, other than a special Court, may, if it think fit, constitute as its assessor, for the purposes of the investigation, any person conversant with maritime affairs and willing to act as such assessor.

Such person shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

**13. If any Court making an investigation under Act IV of 1875, s. 15.**

Power to arrest witnesses and cause entry and detention of vessels. this chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

No person shall be detained by virtue of this section for more than forty-eight hours.

**14. Whenever, in the course of any such investigation, it appears that any**

Power to commit for trial. person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at such trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate:

And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

(a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(b) that it was made in the presence of the person accused.

A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

**15. The Court shall, in the case of all investigations under this chapter, transmit to the Local Government, a full report of the conclusions at which it has arrived, together with the evidence.**

Report by Court to Local Government. Cf. Act IV of 1875, s. 11 and 12.

In cases in which, under the Merchant Shipping Acts, 1854 to 1880, the Court is required to send a report to the Board of Trade, such report shall be sent through the Local Government, and the

submission of such report to the Local Government shall be a sufficient compliance with this section.

### CHAPTER III.

#### SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

16. Nothing herein contained shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1880, on the Courts conducting investigations under sections seven, eight, nine and ten of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

When any such Court cancels or suspends any such certificate, it may, in its report to the Local Government, advise such Government to grant, without examination, to the holder of such certificate, when such certificate is a certificate as master, a certificate as master or mate; and, when such certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be; and such Local Government, if it thinks fit, and if it is empowered by any enactment of a British Indian legislature for the time being in force to grant such certificate, may grant it under such enactment, but without examination. A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

See Act IV of 1875, s. 18.

17. Any certificate (whether of competency or service) which has been granted by any Local Government, to any master, mate or engineer, and to which the provisions of the Merchant Shipping (Colonial) Act, 1869, do not apply, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say:—

(a) if, upon any investigation made under this Act, the Court reports that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct;

(b) if, upon any investigation made under the provisions of the Merchant Shipping Acts, 1854 to 1880, or upon any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that such master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

(c) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony: and

(d) if (in the case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force:

Provided that, in any case in which an investigation has been made into a charge against any master, mate or engineer, no certificate shall be suspended or cancelled under clause (a) unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section nine or section ten, as the case may be.

18. Every master, mate or engineer whose certificate is cancelled or suspended under section seventeen shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees.

19. If the Local Government which cancels or suspends, under section seventeen, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted such certificate.

20. Every Local Government cancelling or suspending under section seventeen the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

21. Any Local Government may at any time revoke any order of cancellation or suspension which it may have made under section seventeen, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

A certificate of competency for a Home-trade ship under the said Act No. I of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign-going ship under the same Act.

Every revocation and every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.

## CHAPTER IV.

## AGREEMENTS WITH SEAMEN.

Act IV of  
1875, s. 28.

22. This chapter shall be read with, and taken Chapter to be read as part of, the said Act No. I of 1859.

See Act IV of  
1875, s. 24.

23. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in British India as one of his crew, in the manner hereinafter mentioned.

See Act IV of  
1875, s. 25.

24. Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say:—

(a) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(b) the number and description of the crew, specifying how many are engaged as sailors;

(c) the time at which each seaman is to be on board or to begin work;

(d) the capacity in which each seaman is to serve;

(e) the amount of wages which each seaman is to receive;

(f) a scale of the provisions which are to be furnished to each seaman; and

(g) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

See sec. 82 of  
the Bill which  
became Act  
VII of 1880.

25. In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be from time to time fixed and published by the Local Government with the previous sanction of the Governor General in Council.

Any master entering into an agreement with any lascar or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

Act IV of  
1875, s. 26.

26. Whenever it is agreed that the service of any lascar or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars

specified in section twenty-four, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on; or

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on;

and every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

EXPLANATION.—In this section the word “seaman” includes also a Native of British India carried to sea from any port in British India as one of the crew of a ship.

27. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascar or other Native seaman, in any port in British India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

## CHAPTER V.

## PORT-INSPECTORS.

28. In the Indian Ports Act, 1875, after section eighteen, the following sections shall be inserted, that is to say:—

“18A. The Local Government may, from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

“Every officer so appointed shall, subject to the control of the Local Government, have the following powers within the limits of the port for which he is appointed, that is to say:—

“(a) he may at any time enter any vessel, and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel, and the medicines and appliances and the accommodation for the seamen;

“(b) he may medically examine all or any of the persons on board such vessel;

“(c) he may require and enforce the production of the log and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board such vessel;

“(d) he may call before him and examine for such purpose all or any of such persons, and may require answers to any inquiries he thinks fit to make;

“(e) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.

“18B. The Port-inspector shall, on first entering any vessel after its arrival, inquire whether any lascar or other Native seaman on board such vessel desires to make any complaint against the master or any of the crew thereof.



"In the event of any such seaman so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

"The Port-inspector shall forthwith report in writing to the Shipping Master the particulars of any complaint made to him under this section, together with his opinion thereon."

## CHAPTER VI.

### MISCELLANEOUS.

See Act XIII of 1878, s. 1.

29. In cases where any wages or expenses recoverable under section 213 of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, authorize, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, such wages or expenses.

Power to appoint persons to sue.

Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

All suits and proceedings under this section shall be instituted and carried on in the name of the Secretary of State for India in Council.

Suits, &c., to be instituted in name of Secretary of State for India in Council.

30. Sections 9 to 16 (both inclusive) of the said Act No. I of 1859 shall not apply to ships registered under Act No. X of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen.

31. In sections 2, 15, 17 and 23 of the said Act No. X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur, the following words shall be substituted, namely:—"on conviction before a Presidency Magistrate or a Magistrate of the first class."

## STATEMENT OF OBJECTS AND REASONS.

PARAGRAPH 8 of the Report, dated the 20th February, 1880, of the Select Committee on the Bill relating to Merchant Shipping, which afterwards became the Indian Merchant Shipping Act, 1880, ran as follows:—

"8. We have omitted chapters VII and VIII of the Bill as introduced, as we consider that the matters to which they relate would be more fitly dealt with in a Bill to consolidate Act No. IV of 1875 and the sections of Act No. XIII of 1878 by which it is amended."

2. The nature of the contents of these omitted chapters will be learnt from the following paragraphs of the Statement of Objects and Reasons, dated the 29th August, 1879, appended to that Bill:—

"21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a 'Port-inspector.' This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

"22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The one extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen."

3. It is with a view to carry out the suggestion of the Select Committee above quoted that the present Bill has been prepared.

The Bill, however, does more than merely consolidate the provisions of the Acts of 1875 and 1878 and re-enact them with the addition of the points omitted from the Merchant Shipping Bill of 1879.

These Acts of 1875 and 1878 relate in part to the suspension and cancellation of Board of Trade certificates to which the provisions of the Imperial Merchant Shipping Acts apply. An examination of the provisions of our Acts in connection with those of the Imperial Acts shows that our Acts deal with several matters already provided for by Parliament. This is not desirable. Apart from the question which might be raised as to the validity of our law, where that law is not transcribed *verbatim*, it is inconvenient from a practical point of view that double provisions relating to the same subject-matter should exist side by side. In re-enacting, therefore, the provisions of the Acts repealed by the Bill, an endeavour has been made to restrict the provisions of the Bill to matters for which the Imperial Acts do not provide, and on which it is clear we can legislate. This has necessitated the omission of some and the amendment of other provisions of the present law.

4. The opportunity of this Bill has been taken to amend section 26 of Act IV of 1875, so as to provide that, when the service of any lascar is to end at any port not in British India, the agreement between him and the master shall invariably stipulate for his return to British India, and not merely for his employment on board some vessel bound to such other port as may be agreed on, possibly not in British India. It is clear that, with the extended employment of Native seamen in the Eastern trade, and the increasing number of Asiatic sailors found in a destitute condition at European ports, Government should, on economical grounds, if for no other reason, devise steps to secure the return of Indian seamen to this country at the expense of the persons who take them away.

5. The 31st section of Act IV of 1875, which confers certain powers on Courts for the trial of pilots constituted under Act XII of 1859, has been excluded from the present Bill, as the matter is one which will be more properly provided for by a separate Bill amending that Act.

*The 24th February, 1881.*

WHITLEY STOKES.

D. FITZPATRICK,  
*Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee:—

No. 7 OF 1881.

*A Bill to give power to arrest persons whose evidence is needed under Act No. XII of 1859.*

WHEREAS it is expedient to empower the Judges holding trials under Act No. XII of 1859 (*An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty*) to arrest persons

Preamble.

whose evidence is required on such trials; It is hereby enacted as follows:—

1. The following section shall be inserted Addition to Act XII immediately after section 14 of 1859, after section 14. of the said Act, namely:—

“15. Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

“Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

“No person shall be detained under this section for more than forty-eight hours.”

## STATEMENT OF OBJECTS AND REASONS.

THE last section of Act IV of 1875, which confers on Courts established for the trial of pilots in Bengal under Act XII of 1859 certain powers for compelling the attendance of witnesses, will be repealed if the Merchant Shipping Bill, which is to be introduced to-day, becomes law. As such a provision is somewhat out of place in a Merchant Shipping Act, it seems better to re-enact it as a section in Act XII of 1859, and the present Bill has accordingly been prepared for this purpose.

The 4th March, 1881.

WHITLEY STOKES.

D. FITZPATRICK,

Secy. to the Govt. of India.





# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 12, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee:—

No. 5 of 1881.

*A Bill to amend the Indian Penal Code.*

For the purpose of amending the Indian Penal Code; It is hereby enacted  
Preamble. as follows:—

1. In the second clause of section 40 of the said Code, before the figure "109," the figures "65, 66, 71" shall be inserted.

2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely:—

"In every case punishable under any law in force for the time being, with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case punishable under this Code with fine only, in which the offender is sentenced to a fine,"

3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted.

4. To section 71 of the said Code, the following clause shall be added:—

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

5. In section 214 of the said Code, for the Exception, the following shall be substituted, namely:—

"Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

6. In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely:—

"or (where the property is agricultural produce) ten rupees or upwards."

### STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make six amendments of the Indian Penal Code.

The first is to render the word "offence," as used in sections 65, 66 and 71 (as amended by this Bill), applicable to things punishable under the Code or any special or local law.

The second is to render section 64 (as to sentence of imprisonment on default of payment of fine) applicable to convictions under special and local laws in case of offences punishable both with imprisonment and fine. It corresponds with the first clause of section 309 of Act X of 1872, which will be repealed by the new Code of Criminal Procedure.

The third is to declare that, when an offence is punishable with fine only, the imprisonment in default of payment of the fine shall be simple: this is in accordance with a decision of the Bombay High Court (5 Bom. C. C. 55).

The fourth is to declare, by an addition to section 71, that, when anything is an offence falling within two or more separate definitions, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences. This corresponds with the latter part of the second clause of section 454 of the present Code of Criminal Procedure; but it is clearly matter of substantive law, and should therefore be placed in the Penal Code.

The fifth is to replace the obscure Exception which now stands in section 214 by the following :—

" *Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

This will be read with section 345 of the new Code of Criminal Procedure, which declares that certain specified offences, and no others, may be compounded.

The sixth is to render the offence of committing mischief by fire, intending to cause damage to agricultural produce worth ten rupees or upwards, punishable with the severer penalty provided by section 435 of the Code. As the law stands, mischief by fire is cognizable only when committed with intent to cause damage to the amount of Rs. 100 or upwards. But agricultural holdings are generally so small that the total produce of a holding is often less than Rs. 100. The result is that a raiyat may have garnered his crop and lose the whole of it through the act of an incendiary, and yet the offence is only punishable with three months' imprisonment and fine, and may not be investigated by the police without the special order of a Magistrate. An alteration in the paragraph of the second schedule to the new Code of Criminal Procedure, which relates to section 435 of the Penal Code, will render the offence in question cognizable by the police.

WHITLEY STOKES.

*The 20th February, 1881.*

D. FITZPATRICK,  
*Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee:—

No. 6 of 1881.

## MERCHANT SHIPPING BILL, 1881.

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Suits, &c., to be instituted in name of Secretary of State for India in Council.
30. Provisions as to examinations, &c., of masters not to apply to certain ships.
31. Amendment of Act X of 1841, sections 2, 15, 17 and 23.



*A Bill for the further amendment of the law relating to Merchant Shipping.*

WHEREAS it is expedient to amend the law relating to investigations into casualties affecting ships and charges against masters, mates and engineers;

and whereas it is also expedient to provide, in other respects hereinafter appearing, for the regulation and control of merchant shipping;

It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

Short title.

1. This Act may be called "The Indian Merchant Shipping Act, 1881;"

Extent.

It extends to the whole of British India;

Commencement.

and it shall come into force at once.

2. The Indian Merchant Shipping Act, 1875, and Act No. XIII of 1878

*(An Act to provide for the recovery in British India of wages due to, and expenses incurred in respect of, certain seamen and apprentices, and to amend the Indian Merchant Shipping Act, 1875, and the Indian Ports Act, 1876), are hereby repealed.*

But all proceedings commenced, officers appointed, powers conferred, investigations held, certificates cancelled or suspended, agreements made and persons authorized under the said Acts or either of them, shall be deemed to have been respectively commenced, appointed, conferred, held, cancelled or suspended, made and authorized under this Act.

Interpretation-clause.

3. In this Act

"ship" includes every description of vessel used in navigation not propelled by oars; and

Definition of ship:

"master" means any person (except a pilot or harbour-master) having for the time being control or charge of a ship.

"master."

4. Nothing in this Act affects the powers

Saving of powers of conferred by section two hundred and forty of the Merchant Shipping Act, 1854, or by section eighty of Act No. I of 1859 *(for the amendment of the law relating to Merchant Shipping)*, on Courts having admiralty jurisdiction in India.

The powers conferred by the last-mentioned enactment may, at any port in British India where there is no Court having admiralty jurisdiction, be exercised by the principal Court of ordinary criminal jurisdiction.

## CHAPTER II.

### INVESTIGATIONS INTO CASUALTIES AFFECTING SHIPS, AND CHARGES AGAINST MASTERS, MATES OR ENGINEERS.

5. Nothing in this chapter shall be deemed to

Chapter not to apply apply to any ship belonging to, or in the service of, Her Majesty or belonging to any foreign Prince or State.

6. Whenever any Magistrate, or any officer appointed by the Local Government in this behalf, receives credible information that—

(a) any ship has been lost, abandoned, stranded or damaged on or near the coasts of British India; or

(b) by reason of any casualty happening to or on board of any ship on or near such coasts, loss of life has ensued; or

(c) any ship has caused loss or damage to any other ship on or near such coasts; or

(d) any such loss, abandonment, stranding, damage or casualty has happened elsewhere, and any competent witnesses thereof have arrived or are to be found at any place in British India; or

(e) any ship is supposed to have been lost, and any evidence can be obtained in British India as to the circumstances under which she proceeded to sea or was last heard of;

he shall forthwith report in writing such information to the Local Government.

In the cases mentioned in clauses (a), (b) and (c), the master, pilot, harbour-master or other person in charge of the ship or (where two ships are concerned) in charge of each ship, at the time of such loss, abandonment, stranding, damage or casualty, and

in cases under clause (d), where the ship concerned proceeds direct from the place where such loss, abandonment, stranding, damage or casualty has occurred to any place in British India, the master of such ship at the time she arrives at such place,

shall, on arriving in British India, give immediate notice of such loss, abandonment, stranding, damage or casualty to the nearest Magistrate, or, when he arrives at a port, to the officer appointed at such port as aforesaid.

Any person bound to give notice under this section and wilfully failing to give the same shall be punished with fine which may extend to five hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to three months.

7. If in any such case a formal investigation *See Act IV of 1875, s. 4.* Power to appoint into the facts mentioned in section six, clause (a), (b), (c), (d) or (e), appears to the Local Government to be requisite or expedient, the Local Government (whether such notice be given or not) may appoint a special Court, consisting of not less than two nor more than four persons, and direct such Court to make such investigation, and may fix the place for making the same.

One of such persons shall be a Magistrate acting in or near the place where the investigation is made; another shall be some person conversant with maritime affairs. The other or others (if any) shall be conversant with either maritime or mercantile affairs.

8. Every Court having admiralty jurisdiction in British India, and the principal Court of ordinary criminal jurisdiction at every port of British India where there is no Court having admiralty jurisdiction, is hereby authorized, when so directed by the Local Government, to make the investigations referred to in section seven. *See Act IV of 1875, s. 5.*

*See Act IV of 1875, s. 3, and section 81 of the Bill which afterwards became Act VII of 1880.*

*See Act IV of 1875, s. 23; Act XV of 1863, s. 10; Act XXVIII of 1861, s. 3.*

*See Act XIII of 1876, s. 1.*

9. Any Court making an investigation under section seven or section eight may inquire into any charge of incompetency or misconduct arising, in the course of such investigation, against any master, mate or engineer holding a certificate granted, under any enactment for the time being in force, by the Board of Trade or a Local Government, as well as into any charge of a wrongful act or default on his part causing any such loss, abandonment, stranding, damage or casualty as aforesaid.

Act XVII of 1878, s. 3.

In every case in which there is reason to believe that any such charge, whether of incompetency or misconduct, or of a wrongful act or default, as aforesaid, will arise against any such master, mate or engineer in the course of an investigation, the Court shall, if practicable, before the commencement of such investigation, cause to be furnished to him a copy of the report upon which such investigation has been directed.

Cf. s. 6 of Act IV of 1875.

Also s. 241 of 17 & 18 Vic. c. 104.

10. If the Local Government has reason to believe that there are grounds for charging any such master, mate or engineer with incompetency or misconduct, otherwise than in the course of an investigation under section seven or section eight, it may transmit a statement of the case to any Court mentioned in section eight, at or nearest to the place at which it may be convenient for the parties and witnesses to attend, and may direct such Court to make an investigation into such charge.

Before commencing such investigation, the Court shall cause the master, mate or engineer so charged to be furnished with a copy of the statement so transmitted by the Local Government.

Act IV of 1875, s. 7.

Act IV of 1875, s. 10.

11. For the purpose of an investigation under this chapter into any charge against a master, mate or engineer, the Court may summon him to appear, and shall give him full opportunity of making a defence either in person or otherwise.

Act IV of 1875, s. 8.

12. For the purpose of any investigation under this chapter, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have—

(a) if such Court is a special Court—the same powers as are exercisable by the principal Court of ordinary criminal jurisdiction for the place at which the investigation is made;

(b) if such Court is a Court having admiralty jurisdiction or a principal Court of ordinary criminal jurisdiction—the same powers as are exercisable by such Court in the exercise of such admiralty or criminal jurisdiction (as the case may be).

And every Court making any such investigation, other than a special Court, may, if it think fit, constitute as its assessor, for the purposes of the investigation, any person conversant with maritime affairs and willing to act as such assessor.

Assessors.

Such person shall attend during the investigation and deliver his opinion in writing, to be recorded on the proceedings. But the exercise of all powers conferred on the Court by this Act or any other enactment for the time being in force shall rest with the Court.

13. If any Court making an investigation under this chapter thinks it necessary for obtaining evidence that any person should be arrested, it may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

Power to arrest witnesses and cause entry and detention of vessels.

Act IV of 1875, s. 15.

Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

No person shall be detained by virtue of this section for more than forty-eight hours.

14. Whenever, in the course of any such investigation, it appears that any person has committed an offence punishable under any law in force in British India, the Court making the investigation may (subject to such rules consistent with this Act as the High Court may from time to time prescribe) cause him to be arrested, or commit him or hold him to bail to take his trial before the proper Court; and may bind over any person to give evidence at such trial, and may, for the purposes of this section, exercise all the powers of a Magistrate of the first class or of a Presidency Magistrate:

Power to commit for trial.

Act IV of 1875, s. 16.

And whenever in the course of such trial the testimony of any witness is required in relation to the subject-matter, any deposition previously made by him in relation to the same subject-matter before any Court making an investigation under this chapter shall, if authenticated by the signature of the Magistrate or presiding Judge, be admissible in evidence on proof—

Power to bind over persons to give evidence.

Depositions.

(a) that the witness cannot be found within the jurisdiction of the Court before which the trial is held; and

(b) that it was made in the presence of the person accused.

A certificate by the Magistrate or presiding Judge that the deposition was made in the presence of the accused shall, unless the contrary be proved, be sufficient evidence that it was so made.

15. The Court shall, in the case of all investigations under this chapter, transmit to the Local Government a full report of the conclusions at which it has arrived, together with the evidence.

Report by Court to Local Government.

Cf. Act IV of 1875, ss. 11 and 12.

In cases in which, under the Merchant Shipping Acts, 1854 to 1880, the Court is required to send a report to the Board of Trade, such report shall be sent through the Local Government, and the

submission of such report to the Local Government shall be a sufficient compliance with this section.

### CHAPTER III.

#### SUSPENSION AND CANCELLATION OF CERTIFICATES AND GRANT OF FRESH CERTIFICATES.

16. Nothing herein contained shall affect the powers conferred by the Merchant Shipping Acts, 1854 to 1880, on the Courts conducting investigations under sections seven, eight, nine and ten of this Act, to cancel or suspend certificates granted under any of the said Merchant Shipping Acts, or certificates to which the provisions of any such Act have been made applicable under the Merchant Shipping (Colonial) Act, 1869.

When any such Court cancels or suspends any such certificate, it may, in its report to the Local Government, advise such Government to grant, without examination, to the holder of such certificate, when such certificate is a certificate as master, a certificate as master or mate; and, when such certificate is a certificate as mate or engineer, a certificate as mate or engineer, as the case may be; and such Local Government, if it thinks fit, and if it is empowered by any enactment of a British Indian legislature for the time being in force to grant such certificate, may grant it under such enactment, but without examination. A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

See Act IV of 1876, s. 18.

17. Any certificate (whether of competency or service) which has been granted by any Local Government, to any master, mate or engineer, and to which the provisions of the Merchant Shipping (Colonial) Act, 1869, do not apply, may be suspended or cancelled, by that or any other Local Government, in the following cases, that is to say:—

(a) if, upon any investigation made under this Act, the Court reports that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of drunkenness, tyranny or other misconduct;

(b) if, upon any investigation made under the provisions of the Merchant Shipping Acts, 1854 to 1880, or upon any investigation made by any Court or tribunal for the time being authorized by the legislative authority in any British possession to make enquiry into charges of incompetency or misconduct on the part of masters, mates or engineers of ships, or as to shipwrecks or other casualties affecting ships, the Court or tribunal reports that such master, mate or engineer is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by his wrongful act or default;

(c) if he is proved to have been convicted of any offence which, if committed in British India, would be non-bailable, or, if committed in England, would be a felony: and

(d) if (in the case of a master) he has been superseded by the order of any Admiralty Court, or of any Naval Court constituted as provided by the Merchant Shipping Act, 1854, or by any other law for the time being in force:

Provided that, in any case in which an investigation has been made into a charge against any master, mate or engineer, no certificate shall be suspended or cancelled under clause (a) unless the Local Government is satisfied that the holder of the certificate has been furnished before the commencement of the investigation with the copy of the report or statement required by section nine or section ten, as the case may be.

18. Every master, mate or engineer whose certificate is cancelled or suspended under section seventeen shall deliver it to the Shipping Master, or to such other person as the Local Government which cancelled or suspended the certificate directs, and in default of such delivery shall, for each offence, be punished with fine which may extend to five hundred rupees.

19. If the Local Government which cancels or suspends, under section seventeen, a certificate of a master, mate or engineer is not the Local Government that granted the same, the Local Government so cancelling or suspending the certificate shall report the proceedings, and the fact of cancellation or suspension, to the Local Government which granted such certificate.

20. Every Local Government cancelling or suspending under section seventeen the certificate of a master, mate or engineer shall, as soon as may be practicable, report to the Board of Trade the fact of such cancellation or suspension.

21. Any Local Government may at any time revoke any order of cancellation or suspension which it may have made under section seventeen, or grant, without examination, to any person, whose certificate it has so cancelled, a new certificate of the same or of any lower grade.

A certificate so granted shall, except for the purposes of the said Merchant Shipping (Colonial) Act, 1869, have the same effect as if it had been granted after examination.

A certificate of competency for a Home-trade ship under the said Act No. I of 1859 shall be deemed, for the purposes of this section, to be of a lower grade than a certificate of competency for a foreign-going ship under the same Act.

Every revocation and every grant under this section shall, as soon as may be practicable, be reported to the Board of Trade.



## CHAPTER IV.

## AGREEMENTS WITH SEAMEN.

Act IV of 1875, s. 28. 22. This chapter shall be read with, and taken Chapter to be read as part of, the said Act No. I of 1859.

Act IV of 1875, s. 24. 23. The master of every ship, except ships of a burden not exceeding three hundred tons employed only in the Home-trade, shall enter into an agreement with every seaman whom he carries to sea from any port in British India as one of his crew, in the manner hereinafter mentioned.

Act IV of 1875, s. 25. 24. Every such agreement shall be in a form sanctioned by the Governor General in Council, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof, that is to say :—

(a) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, and the places or parts of the world, if any, to which the voyage or engagement is not to extend;

(b) the number and description of the crew, specifying how many are engaged as sailors;

(c) the time at which each seaman is to be on board or to begin work;

(d) the capacity in which each seaman is to serve;

(e) the amount of wages which each seaman is to receive;

(f) a scale of the provisions which are to be furnished to each seaman; and

(g) any regulations as to conduct on board, and as to fines, short allowance of provisions or other lawful punishments for misconduct, which have been sanctioned by the Governor General in Council as regulations proper to be adopted, and which the parties agree to adopt.

And every such agreement shall be so framed as to admit of stipulations to be adopted at the will of the master and seaman in each case (not being inconsistent with the provisions of any enactment for the time being in force relating to Merchant Shipping), as to advance of wages and supply of warm clothing, and may contain any other stipulations which are not contrary to law.

sec. 82 of Bill which same Act of 1880. 25. In the case of such agreements with lascars or other Native seamen, the scale of the provisions agreed to be furnished to each of such seamen shall not be less than a scale to be from time to time fixed and published by the Local Government with the previous sanction of the Governor General in Council.

Any master entering into an agreement with any lascars or other Native seaman for a scale of provisions less than the scale so fixed and published shall be punished with fine which may extend to two hundred rupees.

Act IV of 1875, s. 26. 26. Whenever it is agreed that the service of any lascars or other Native seaman shall end at any port not in British India, the agreement shall, in addition to the particulars

specified in section twenty-four, contain a stipulation that fit employment shall be provided for him on board some other ship bound to the port at which he was shipped, or such other port in British India as may be agreed on; or

that a passage shall be provided for him to some port in British India free of charge, or on such other terms as may be agreed on;

and every such stipulation shall be signed by the owner of the ship, or by the master on his behalf.

EXPLANATION.—In this section the word "seaman" includes also a Native of British India carried to sea from any port in British India as one of the crew of a ship.

27. If the master of any ship belonging to the United Kingdom or any British possession has an agreement with his crew, made in due form according to the law of the place to which such ship belongs, or in which her crew were engaged, and engages a single seaman, not being a lascars or other Native seaman, in any port in British India, such seaman may sign the agreement so made, and it shall not be necessary for him to sign an agreement under this Act.

## CHAPTER V.

## PORT-INSPECTORS.

28. In the Indian Ports Act, 1875, after section eighteen, the following sections shall be inserted, that is to say :—

"18A. The Local Government may, from time to time, appoint in any port subject to this Act an officer to be called the Port-inspector, and suspend or remove such officer.

"Every officer so appointed shall, subject to the control of the Local Government, have the following powers within the limits of the port for which he is appointed, that is to say :—

"(a) he may at any time enter any vessel, and may inspect the same and every part thereof, and the provisions and water provided for the use of the persons on board such vessel, and the medicines and appliances and the accommodation for the seamen;

"(b) he may medically examine all or any of the persons on board such vessel;

"(c) he may require and enforce the production of the log and any other books, papers or documents which he thinks necessary for the purpose of enquiring into the health and medical condition of the persons on board such vessel;

"(d) he may call before him and examine for such purpose all or any of such persons, and may require answers to any inquiries he thinks fit to make;

"(e) he may require any persons so examined by him to make and subscribe a declaration of the truth of the statements made by such person.

"18B. The Port-inspector shall, on first entering any vessel after its arrival, inquire whether any lascars or other Native seaman on board such vessel desires to make any complaint against the master or any of the crew thereof.

"In the event of any such seaman so desiring, the Port-inspector shall hear such complaint and record the particulars thereof in writing, and may, for the purpose of ascertaining the truth of the same, exercise any of the powers mentioned in section 18A.

"The Port-inspector shall forthwith report in writing to the Shipping Master the particulars of any complaint made to him under this section, together with his opinion thereon."

## CHAPTER VI.

### MISCELLANEOUS.

See Act XIII  
of 1878, s. 1.

29. In cases where any wages or expenses recoverable under section 213 of the Merchant Shipping Act, 1854, or under section 16 of the Merchant Shipping Act Amendment Act, 1855, are, under the same sections, a charge upon any ship, or recoverable from any master, owner or other person, within the jurisdiction of any Court in British India, the Governor General in Council may, from time to time, by notification in the *Gazette of India*, authorize, either generally or specially, such persons as he thinks fit to sue for and recover, in manner in the Merchant Shipping Act, 1854, section 213, provided, such wages or expenses.

Power to appoint persons to sue.

Every person so authorized shall be entitled to sue and recover accordingly in any such Court, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872, section 57, clause 7.

All suits and proceedings under this section shall be instituted and carried on in the name of the Secretary of State for India in Council.

30. Sections 9 to 16 (both inclusive) of the said Act No. I of 1859 shall not apply to ships registered under Act No. X of 1841 and trading between ports in India and the coasts of Arabia, when such ships are navigated and manned exclusively by Arabs, lascars, or other Asiatic masters and seamen.

31. In sections 2, 15, 17 and 23 of the said Act No. X of 1841, for the words "on information in any Court of Her Majesty or the East India Company by the Advocates General of the respective Presidencies," "by information as aforesaid," "on information as aforesaid," "upon information as aforesaid," in each of the places where they occur, the following words shall be substituted, namely:—"on conviction before a Presidency Magistrate or a Magistrate of the first class."

## STATEMENT OF OBJECTS AND REASONS.

PARAGRAPH 8 of the Report, dated the 20th February, 1880, of the Select Committee on the Bill relating to Merchant Shipping, which afterwards became the Indian Merchant Shipping Act, 1880, ran as follows:—

"8. We have omitted chapters VII and VIII of the Bill as introduced, as we consider that the matters to which they relate would be more fitly dealt with in a Bill to consolidate Act No. IV of 1875 and the sections of Act No. XIII of 1878 by which it is amended."

2. The nature of the contents of these omitted chapters will be learnt from the following paragraphs of the Statement of Objects and Reasons, dated the 29th August, 1879, appended to that Bill:—

"21. Chapter VII, by an addition to the Ports Act, 1875, provides for the appointment of an officer called a 'Port-inspector.' This officer, in addition to performing the duties at present performed by the Health-officer (for the performance of which duties he is by the Bill invested with certain legal powers), is intrusted with the duty of inquiring into any complaints which may be made on the arrival of a ship in port by any of the crew against the master or any others of the crew. This latter provision has been inserted, in compliance with the desire of the Secretary of State, for the protection of lascars or other Oriental seamen when serving on board a European ship.

"22. Chapter VIII makes two amendments of the Indian Merchant Shipping Act, 1875. The one extends the provisions of section 3 of that Act so as to give power to hold Marine Courts of Enquiry in certain cases which are at present unprovided for. This change has been introduced at the request of the local Marine authorities, and is in accordance with the provisions of the English law as recently amended. The other amendment gives the Local Government power to fix a scale of provisions, for less than which it will be penal for a master to contract with any lascar or Native seaman—a provision which has been found to be essential for the protection of such seamen."

3. It is with a view to carry out the suggestion of the Select Committee above quoted that the present Bill has been prepared.

The Bill, however, does more than merely consolidate the provisions of the Acts of 1875 and 1878 and re-enact them with the addition of the points omitted from the Merchant Shipping Bill of 1879.

These Acts of 1875 and 1878 relate in part to the suspension and cancellation of Board of Trade certificates to which the provisions of the Imperial Merchant Shipping Acts apply. An examination of the provisions of our Acts in connection with those of the Imperial Acts shows that our Acts deal with several matters already provided for by Parliament. This is not desirable. Apart from the question which might be raised as to the validity of our law, where that law is not transcribed *verbatim*, it is inconvenient from a practical point of view that double provisions relating to the same subject-matter should exist side by side. In re-enacting, therefore, the provisions of the Acts repealed by the Bill, an endeavour has been made to restrict the provisions of the Bill to matters for which the Imperial Acts do not provide, and on which it is clear we can legislate. This has necessitated the omission of some and the amendment of other provisions of the present law.

4. The opportunity of this Bill has been taken to amend section 26 of Act IV of 1875, so as to provide that, when the service of any lascar is to end at any port not in British India, the agreement between him and the master shall invariably stipulate for his return to British India, and not merely for his employment on board some vessel bound to such other port as may be agreed on, possibly not in British India. It is clear that, with the extended employment of Native seamen in the Eastern trade, and the increasing number of Asiatic sailors found in a destitute condition at European ports, Government should, on economical grounds, if for no other reason, devise steps to secure the return of Indian seamen to this country at the expense of the persons who take them away.

5. The 31st section of Act IV of 1875, which confers certain powers on Courts for the trial of pilots constituted under Act XII of 1859, has been excluded from the present Bill, as the matter is one which will be more properly provided for by a separate Bill amending that Act.

*The 24th February, 1881.*

WHITLEY STOKES.

D. FITZPATRICK,  
*Secy. to the Govt. of India.*



## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee:—

## No. 7 OF 1881.

*A Bill to give power to arrest persons whose evidence is needed under Act No. XII of 1859.*

WHEREAS it is expedient to empower the Judges holding trials under Act No. XII of 1859 (*An Act to make better provision for the trial of Pilots at the Presidency of Fort William in Bengal for breach of duty*) to arrest persons

Preamble.

whose evidence is required on such trials; It is hereby enacted as follows:—

1. The following section shall be inserted Addition to Act XII immediately after section 14 of 1859, after section 14. of the said Act, namely:—

“15. Whenever the Judge of the said Court thinks it necessary for obtaining evidence that any person should be arrested, he may issue a warrant for his arrest, and may, for the purpose of effecting such arrest, authorize any officer (subject, nevertheless, to any general or special instructions from the Local Government) to enter any vessel.

“Any officer so authorized may, for the purpose of enforcing such entry, call to his aid any officers of police or customs, or any other persons, and may seize and detain the vessel for such time as is reasonably necessary to effect the arrest; and every such officer or other person shall be deemed to be a public servant within the meaning of the Indian Penal Code, section 186.

“No person shall be detained under this section for more than forty-eight hours.”

## STATEMENT OF OBJECTS AND REASONS.

THE last section of Act IV of 1875, which confers on Courts established for the trial of pilots in Bengal under Act XII of 1859 certain powers for compelling the attendance of witnesses, will be repealed if the Merchant Shipping Bill, which is to be introduced to-day, becomes law. As such a provision is somewhat out of place in a Merchant Shipping Act, it seems better to re-enact it as a section in Act XII of 1859, and the present Bill has accordingly been prepared for this purpose.

*The 4th March, 1881.*

WHITLEY STOKES.

D. FITZPATRICK.

*Secy. to the Govt. of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th March, 1881, and was referred to a Select Committee:—

No. 8 OF 1881.

## No. II.

## THE CODE OF CRIMINAL PROCEDURE, 1882.

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*A Bill to consolidate and amend the law relating to Criminal Procedure.*

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

**PART I.  
PRELIMINARY.**

**CHAPTER I.**

1. This Act may be called "The Code of Criminal Procedure, 1882;" and shall come into force on the first day of January, 1883;

Act X, 1872, ss. 1, 2, 111, 529, 535, 540, 541. Local extent. It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed,\* by any other law now in force, or shall apply to—

Act X, 1872, s. 540. (a) the Commissioner of Police or the police in the towns of Calcutta, Madras and Bombay; (b) any officer duly authorized to try petty offences in military bázars at cantonments and stations occupied by the troops of the said Presidencies respectively; (c) heads of villages in the Presidency of Fort Saint George; or (d) village Police-officers in the Presidency of Bombay.

Act X, 1875, s. 2. Act X, 1872, s. 2, para. 1. 2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column of the said schedule, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Act X, 1872, s. 2, last para., s. 10. All notifications published, proclamations issued, powers conferred, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, defined, passed and made under the corresponding section of this Code.

Act X, 1872, s. 2, paras. 3, 4. 3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of the Code of Criminal Procedure, Act No. XXV of

1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean Sub-divisional Magistrate, and the expression "Magistrate of Police" shall be deemed to mean Presidency Magistrate. Act IV, 1872, s. 10.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

(a) "Complaint" means the allegation made to a Magistrate with a view to institute proceedings under this Code that some person, whether known or unknown, has committed an offence; but does not include the report of a Police-officer:

(b) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the Police or by any person authorized by a Magistrate in this behalf:

(c) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

(d) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken:

(e) "Writing" and "written" include "printing," "lithography," "photography" and "engraving" and the like:

(f) "To sign" means to affix a name or mark in writing or by means of a stamp:

(g) "Sub-division" means a sub-division of a District made under this Code:

(h) "Province" means the territories for the time being under the administration of any Local Government:

(i) "Presidency-town" means the local limits for the time being of the ordinary original criminal jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

Act X, 1875,  
s. 3, altered.  
Another defini-  
tion *infra*,  
s. 267.

(i) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon:

Query as to Special Court acting under the 79th section of the Burma Courts Act, 1875. In other cases "High Court" means the highest Court of criminal appeal or revision for any local area:

See *précis*, para. 160. or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may from time to time appoint in this behalf:

Act X, 1875, s. 3. (k) "Chief Justice" includes also the senior "Chief Justice." Judge of a Chief Court:

Act X, 1875, s. 3. (l) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may from time to time appoint in this behalf:

Act X, 1875, s. 3. (m) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

New: see Act X, 1872, s. 57. (n) "Public prosecutor" means any person appointed under section 502, and includes any person acting under the directions of a public prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

New. (o) "Pleader" used with reference to any proceeding in any Court means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorized, and (2) any *mukhtár* or other person appointed with the permission of the Court to act in such proceeding:

(p) "Police-station" means any post declared by the Local Government to be a Police-station for the purposes of this Code; and "Officer in charge of a Police-station" includes, when the officer in charge of the station is absent therefrom or ill, the Police-officer next in rank present at the Police-station above the rank of Constable, or, when the Local Government so directs, any other Police-officer so present:

11, Bom., 98. (q) "Sessions-case" means a case triable exclusively by the Court of Session, or which the Magistrate commits to the Court of Session, though he might have tried it himself:

(r) "Offence" means any act or omission made punishable by any law for the time being in force:

(e) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

"Non-cognizable offence" means an offence for, and "Non-cognizable case" means a case in, which a Police-officer may not arrest without warrant:

(t) "Bailable offence" means an offence shewn as bailable in the second schedule or which is made bailable by any other law for the time being in force: and "non-bailable offence" means any other offence:

(u) "Warrant-case" means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months:

(v) "Summons-case" means a case relating to an offence not so punishable:

(w) "European British subject" means— (1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grand-child of any such person by legitimate descent:

(x) "Chapter" means a chapter of this Code: "Chapter." "Schedule" means a schedule hereto annexed:

(y) "Place" includes also a house, building, tent and vessel:

Words referring to acts. Words which refer to acts done extend also to illegal omissions, and

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings attached to them respectively by that Code.

5. All offences under the Indian Penal Code shall, and all offences under any other law shall, in the absence of any enactment for the time being in force regulating the mode or place of inquiry or trial, be enquired into and tried according to the provisions herein-after contained.

## PART II. CONSTITUTION AND POWERS OF CRI- MINAL COURTS AND OFFICES.

### CHAPTER II.

#### OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

##### A.—Classes of Criminal Courts.

Act X, 1872, s. 5, 19. **6.** Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

- I.—Courts of Session :
- II.—Courts of Presidency Magistrates :
- III.—Courts of Magistrates of the first class :
- IV.—Courts of Magistrates of the second class :
- V.—Courts of Magistrates of the third class.

##### B.—Territorial Divisions.

Act X, 1872, s. 12. **7.** Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of

Sessions Divisions ;

Act XI, 1874, s. 4. and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Act X, 1872, s. 13, 38. The Local Government may alter the limits or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Act X, 1872, s. 14. The existing Sessions Divisions and Districts shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Act IV, 1877, s. 8, para. 5. Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Act X, 1872, s. 39. **8.** The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

##### C.—Courts and offices outside the Presidency-towns.

Act X, 1872, s. 15, 16, 37, 18. **9.** The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

**10.** In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate. Act X, 1872 s. 35.

**11.** Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeding to vacancies in office of District Magistrate. succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate. Act X, 1872, s. 55.

**12.** The Local Government may appoint as Subordinate Magistrates many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns ; and the Local Government, or the District Magistrate subject to the control of the Local Government, may from time to time define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code. Act X, 1872, s. 37, 49.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

**13.** The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires. Act X, 1872, s. 40.

Such Magistrates shall be called Sub-divisional Magistrates.

The Local Government may delegate its powers under this section to the Magistrate of District.

**14.** The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns. Act X, 1872, s. 42.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section. Act XI, 1874, s. 5.

Act I, 1861.  
s. 6.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Act X, 1872.  
s. 50.

15. The Local Government may direct any two or more Magistrates in any place outside of the Presidency-towns to sit together as a Bench, and may invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases, only, and within such local limits, as the Local Government thinks fit.

Offeruddin v. Ibrahim, I. L. R. 3 Cal. 751.

Act X, 1872.  
s. 51.

Except as otherwise provided by any order of the Local Government under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members belongs, and who is present taking part in the proceedings as a member of the Bench, and as far as possible shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Act X, 1872.  
s. 52, 53.

16. The Local Government may, or the District Magistrate subject to the control of the Local Government, from time to time make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects:—  
(a) the classes of cases to be tried;  
(b) the times and places of sitting;  
(c) the constitution of the Bench for conducting trials;  
(d) the mode of settling differences of opinion which may arise between the Magistrates in session.

Act X, 1872, s. 57, para. 2.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and

Act X, 1872, s. 41.

every Magistrate (other than a Sub-divisional Magistrate) and Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

Act X, 1872, s. 37, para.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordi-

nate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

18. The Local Government shall from time to time appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Appointment of Presidency Magistrates.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed [and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues].

Local limits of their jurisdiction.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

21. Every Chief Magistrate shall exercise in the Presidency-town for which he is appointed all the powers which by any law or rule in force at the time this Act comes into force are required to be exercised by any Senior or Chief Magistrate, and may from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

Chief Magistrate.

(a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;  
(b) the times and places at which Benches of Magistrates shall sit;  
(c) the constitution of such Benches; and  
(d) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

Justices of the Peace for the Mufassal.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and on the territories mentioned in such notification.



Act II, 1869,  
s. 4.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta, and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Act II, 1869,  
s. 10.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the same towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

13 Geo. III, c.  
63, s. 38.

Act X, 1875,  
s. 152.

Act IV, 1877,  
s. 8.

Native High  
Court Judges  
are thus Jus-  
tices of the  
Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General and the Judges of the High Courts established by Royal Charter are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

#### F.—Suspension and Removal.

Act X, 1872,  
s. 9.

26. All Judges of criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed by the Local Government: Provided that such Judges and Magistrates as now are liable to be suspended or removed by the Governor General in Council only shall not be suspended or removed by any other authority.

Act II, 1869,  
s. 9.

27. The Governor General in Council may suspend or dismiss any Justice of the Peace appointed by him, and the Local Government may suspend or dismiss any Justice of the Peace appointed by it.

### CHAPTER III.

#### POWERS OF COURTS.

##### A.—Description of Offences cognizable by each Court.

s. 9, ss. 10,  
195.

Act XI, 1874,  
s. 1.

Act II, 1877,  
s. 8.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such

offence is shown in the seventh column of the second Schedule to be triable.

29. Any offence under any other law shall, where any Court is mentioned in this behalf in such law, be tried by such Court; and when no Court is so mentioned, may be tried by the High Court or by any Court constituted under this Code: Act X, 1872,  
s. 8, para. 2.

Offences under other laws.

Provided that

(a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(b) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(c) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Act X, 1872,  
s. 36.

Offences not punishable with death.

Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

##### B.—Sentences which may be passed by Courts of various Classes.

Sentence which High Court or Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by such Judge shall be subject to confirmation by the High Court. Act X, 1872,  
ss. 15, 16,  
2, 17.

An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of transportation for any term or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge. Act X, 1872,  
s. 18.

32. The Courts of Magistrates may pass the following sentences, namely:— Act X, 1872,  
s. 20.

(a) Courts of Presidency Magistrates and of Magistrates of the first class: Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Fine not exceeding one thousand rupees; Whipping. Act IV,  
s. 11.

(b) Courts of Magistrates of the second class: Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law;  
Fine not exceeding two hundred rupees;  
Whipping.

(c) Courts of Magistrates of the third class: Imprisonment for a term not exceeding one month;  
Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

Act X, 1872, s. 20, Expl., s. 30, para. 2. See I. L. R., 1 of fine. Mud., 77. **33.** The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code:

Act X, 1872, s. 309, para. 1, proviso. As to para. 1 of that section see Act I of 1868. Act IV, 1877, s. 12, omitting paras. 1 & 3. **34.** The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

Act X, 1872, s. 20, Expl. *The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.*

Act X, 1872, s. 36. **34.** The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

See infra, s. 350. **35.** When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

Act X, 1873, s. 314. Act X, 1875, s. 109. Act IV, 1877, s. 13. **35.** When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishments for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that in no case shall such person be sentenced to punishment for a longer period than fourteen years:

Maximum term of imprisonment. Provided also that, if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishments shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, I. L. R., 223. aggregate sentences passed under this section in case of simultaneous convictions for several offences shall be deemed to be a single sentence.

#### C.—Ordinary and Additional Powers.

**36.** All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third class have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

**37.** In addition to his ordinary powers, any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which a Magistrate of such class may be invested by the Local Government or the District Magistrate.

*The power conferred on the District Magistrate by this section shall be exercised subject to the control of the Local Government.*

**38.** All Magistrates of the first and second classes, and all Magistrates of the third class specially empowered in this behalf, shall have all the powers conferred by this Code on an officer in charge of a Police-station.

#### D.—Conferment, Continuance and Cancellation of Powers.

**39.** In conferring powers under this Code, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

**40.** Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to another

equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

41. Any authority may cancel any powers conferred by it on any person under this Code.  
Powers may be varied or cancelled.

### PART III. GENERAL PROVISIONS.

#### CHAPTER IV.

##### OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

Act X. 1872,  
s. 91.

Act IV. 1877,  
s. 247.

42. Every person is bound to assist a Magistrate or Police-officer demanding his aid, whether within or without the Presidency-towns,

(a) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest;

(b) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal or public property;

(c) in the suppression of a riot or affray; or

(d) in the extinguishment of fire dangerous to human life or to valuable property.

Act X. 1872,  
s. 163.

43. When a warrant is directed to a person other than a Police-officer, any other person may aid in executing such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Act X. 1872,  
s. 59.

Act IV. 1877,  
s. 246.

44. Every person, whether within or without the Presidency-towns, aware of the commission of or intention to commit any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, forthwith give information of the same to the nearest Magistrate or Police-officer.

Act X. 1872,  
s. 90.

45. Every village-headman, village-watchman, village-headmen, land-holders and others bound to report certain matters, village-police-officer, owner or occupier of land, and the agent of any such owner or

occupier, and every Native officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, any information which he may obtain respecting—

(a) the residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(c) the commission of or intention to commit any non-bailable offence in or near such village;

(d) the occurrence therein of any death under suspicious circumstances.

EXPLANATION.—In this section "village" includes village-lands.

#### CHAPTER V.

##### OF ARREST, ESCAPE AND RETAKING.

###### A.—Arrest generally.

46. In making an arrest, the Police-officer or other person making the arrest how made. same shall actually touch or

confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest. Act X. 1872, s. 177.

Nothing in this section gives a right to cause the death of a person arrested who is accused of an offence not punishable with death. Act X. 1872, s. 178, adding words as to attempt to evade.

47. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein. Act X. 1872, s. 99, 179.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant cannot be obtained without affording the person to be

arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

Act X, 1872,  
s. 180.

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Act X, 1872, s. 181, which applies only where person to be arrested is accused of an offence for which a warrant may issue.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

New.

49. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors for purposes of liberation.

Act X, 1872,  
s. 182.

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Act X, 1872,  
s. 187, para. 1,  
section 14, infra.

51. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

Act X, 1872,  
s. 186.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made with strict regard to custom.

Mode of searching women.

Act X, 1872,  
s. 187.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which

Power to seize offensive weapons.

or whom the person making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

When Police may arrest without warrant.

54. Any Police-officer may, without order from a Magistrate and without a warrant, arrest—

Act X, 1872, s. 92, omitting cl. 3.

firstly—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly—any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

Act X, 1872, s. 503.

thirdly—any person in whose possession anything is found which may reasonably be suspected to be stolen property;

fourthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

fifthly—any person reasonably suspected of "Or Navy" being a deserter from Her Majesty's Army or added.

55. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

Act X, 1872, s. 94.

(a) any person found taking precautions to conceal his presence within the limits of such station under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker, thief, or an habitual receiver of stolen property knowing it to be stolen.

56. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

Act X, 1872, s. 102, para. 1.

Procedure when Police-officer deposes subordinate to arrest without warrant.

57. Any person who in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, may be

Act X, 1872, s. 93.

Refusal to give name and residence.

58. Any person who in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of such officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, may be



Arrest,  
escape and  
retaking.

Processes  
to compel  
appearance.

arrested or detained by such officer in order that his name or residence may be ascertained; and shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance, before a Magistrate if so required.

Act X, 1872, s. 103. 58. For the purpose of arresting without warrant any person whom he is

Pursuit of offenders into other jurisdictions. authorized to arrest under this chapter, a Police-officer may pursue such person into any place in British India.

Act X, 1872, s. 105. 59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence;

Act X, 1872, s. 107. N. Y. Crim. Proc. Code, s. 184. and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or in the absence of a Police-officer, take such person to the nearest Police-station.

The Police shall deal with such person according to the provisions of section 54 or 57, as the case may be, and shall not detain him in custody unless he appears to be liable to arrest or detention under the section applicable.

Act X, 1872, s. 101. 60. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Act X, 1872, s. 124, para. 1. 61. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 168, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Act X, 1872, s. 132, para. 1. 62. Officers in charge of Police-stations shall report to the District Magistrate, or if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Act X, 1872, s. 133, para. 2. Act IV, 1877, s. 70, para. 1. 63. No person who has been so arrested by a Police-officer shall be discharged except on his bond, with or without sureties, or under the special order of a Magistrate.

Act X, 1872, s. 103. Act IV, 1877, s. 16. 64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person

to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

66. If a person in lawful custody escapes or is rescued, and the person from whose custody he escaped or was rescued is not, under the provisions hereinbefore contained, authorized to arrest him without warrant, he may immediately pursue and arrest him in any place in British India.

67. The provisions of sections 47 and 48 shall apply to arrests under section 66, although the person making such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

## CHAPTER VI.

### OF PROCESSES TO COMPEL APPEARANCE.

#### A.—Summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may from time to time by rule direct.

Such summons shall be served by a Police-officer; or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

69. The summons shall if practicable be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall fix one of the duplicates of the summons on some

conspicuous part of the house in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

to be respectively bound, and (c) the time at which he is to attend before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

77. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same: Act X, 1872, s. 161.  
Act IV, 1877, s. 56.

Provided that when a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them. Act X, 1872, s. 164.  
Act IV, 1877, s. 59.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

79. When a warrant is directed to a person other than a Police-officer, any person other than a Police-officer may aid in executing such warrant, if the person to whom it is directed is near at hand and acting in execution thereof. Act X, 1872, s. 163.

80. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed. Act X, 1872, s. 165.  
Act IV, 1877, s. 60.

81. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant. Act X, 1872, s. 176.

82. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce him. Act X, 1872, s. 163.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, a solemn declaration, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it is delivered or tendered or with whom it is left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The declaration mentioned in this section may be endorsed on the duplicate of the summons and returned to the Court.

#### B.—Warrant of Arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed and sealed by the presiding officer; or, in the case of a Bench of Magistrates, by any member of such Bench.

Every such warrant remains in force until it is cancelled by the Court which issued it, or until it is executed.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

The endorsement shall state (a) the number of sureties, (b) the amount in which they and the person for whose arrest the warrant is issued are

Act X, 1872, s. 158, proviso.

Act XXIII, 1840, s. 1.  
Act IV, 1877, s. 50.

Act IV, 1877, s. 51.

Act X, 1872, s. 159, amended.  
Act IV, 1877, s. 56, which does not require the seal.

Act X, 1872, s. 160.

Act X, 1872, s. 160.  
Act IV, 1877, s. 56.

*Processes to compel appearance.*

Act X, 1872, s. 167. Where warrant may be executed.  
Act IV, 1877, s. 68.  
Act X, 1872, ss. 168, 169, 170, first part.  
Act IV, 1877, s. 64.

83. A warrant of arrest may be executed at any place in British India.  
84. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and cause it to be executed within the local limits of his jurisdiction.

Act X, 1872, ss. 168, 169, 170, first part.  
Act IV, 1877, s. 64, paras. 6, 6, 7.  
85. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local Police shall if so required assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

Act X, 1872, s. 169.  
Act IV, 1877, s. 65, para. 1.  
86. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Act X, 1872, s. 170.  
Act IV, 1877, s. 65, para. 2.  
87. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: *Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant, and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take bail or such security, as the case may be, and forward the bond to the Court which issued the warrant.*

C.—Proclamation and Attachment.

88. If a Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed on some conspicuous part of his ordinary place of abode, or on some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

89. The Court may, after issuing a proclamation under section 88, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(a) by seizure; or  
(b) by the appointment of a receiver or to any one on his behalf; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(e) by seizure; or  
(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

Act X, 1872, ss. 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200.  
Act X, 1875, s. 82.  
Act IV, 1877, ss. 67, 137.  
10 Ben. App. 18.

New as to date of publication.

Act X, 1872, ss. 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200.  
Act IV, 1877, ss. 68, 137.



(h) by all or any two of such methods, as the Court thinks fit.

*The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.*

If the person so believed to have absconded or to be concealing himself does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is of a perishable nature, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Act X, 1872,  
ss. 173, 354.  
Act X, 1875,  
s. 83.  
Act IV, 1877,  
ss. 69, 138.

90. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 89 appears voluntarily or is apprehended and brought before the Magistrate having jurisdiction, and proves to the satisfaction of the Court by whose order the property was attached that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

*D.—Other rules regarding processes.*

Act X, 1872, ss.  
148, para. 2,  
150, 150, 352,  
355, 493,  
para. 1.  
Act X, 1875,  
ss. 81, 84.  
Act IV, 1877,  
ss. 34, 36,  
53, 135, 136,  
217.

91. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Act IV, 1877,  
s. 140.

92. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Act X, 1872,  
s. 208,  
para. 2.  
Act IV, 1877,  
s. 124, para.  
2.

93. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer

presiding in such Court may issue a warrant directing that such person be arrested or produced before him.

94. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Act X, 1872,  
ss. 158, para.  
1, 185.  
Act IV, 1877,  
s. 52.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

*A.—Summons to produce.*

95. Whenever any Court, or in any place beyond the limits of the Presidency towns any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section applies to a letter, post card, telegram or other document in the custody of the Postal or Telegraph Department.

96. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph Department, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police, or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

*B.—Search-warrants.*

97. Where there is reason to believe that a person to whom a summons under section 95 or a requisition under section 96, Act X, 1872, s. 366. Act X, 1875, s. 87. Act IV, 1877, s. 145.

When search-warrant may be issued.

person to whom a summons under section 95 or a requisition under section 96, Act X, 1872, s. 366. Act X, 1875, s. 87. Act IV, 1877, s. 145.



paragraph one, has been or might be addressed will not or would not produce the document or other thing as directed in such summons,

or where such document or other thing is not known to be in the possession of any person,

Act X, 1872, or where the Court considers that the purposes  
s. 308, para. 1. of any inquiry, trial or other proceeding under  
Act IV, 1877, this Code will be served by a general search or  
s. 169. inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Act X, 1872, Nothing herein contained shall authorize any  
s. 369, cl. 1. Magistrate, other than a District Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

Act X, 1872, 98. The Court may, if it thinks fit, specify in  
s. 308, para. 2. the warrant the particular  
General war- place or part thereof to  
rant should which only the search or  
not be the inspection shall extend; and the person charged  
rule. with the execution of such warrant shall then search or inspect only the place or part so specified.

Act X, 1872, 99. If a District Magistrate, Sub-divisional  
s. 377. Magistrate, Presidency Ma-  
Act IV, 1877, gistrate or Magistrate of  
s. 160. the first class, upon informa-  
Section 97 tion and after such inquiry as  
seems to render he thinks necessary, has reason to believe that any  
this section su- place is used for the deposit or sale of stolen prop-  
perfluous. erty,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps, or coin, or instruments or materials used for counterfeiting coin or stamps or for forging are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same as specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also any such instruments and materials as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or for forging.

100. When, in the execution of a search-war- Act X, 1872,  
rant at any place beyond the ss. 373, para.  
Disposal of things found in search beyond local limits of the jurisdic- 2, 374.  
jurisdiction. tion of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Magistrate issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

#### C.—Discovery of persons wrongfully confined.

101. If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate has reason to believe that any person is confined so that such confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate.

#### D.—General Provisions relating to searches.

102. The provisions of sections 75, 77, 79, 80, 83, 84 and 85 shall, so far as may be, apply to all search-warrants issued under section 97, section 99, or section 101. Act X, 1872, ss. 370, 371, 372, 373, para. 1, 374, 376. Act IV, 1877, s. 161.

103. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein. Act X, 1872, s. 382. Act IV, 1877, s. 162.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48. Act X, 1872, ss. 383, 384. Act IV, 1877, ss. 163, 164.

104. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situated, in the presence of witnesses. Act X, 1872, s. 385. Act IV, 1877, s. 165.

searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things found in the course of such search shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness unless specially summoned by it.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search.

E.—Miscellaneous.

105. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

106. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

107. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period not exceeding three years as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

108. Whenever a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class receives information that any person is likely to

commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding three years as the Magistrate thinks fit to fix.

109. When any Magistrate not empowered to proceed under section 108, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 108.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the enquiry hereinafter prescribed.

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

111. Whenever any such Magistrate receives information that any person within the local limits of his jurisdiction is an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

One year in  
Act X, 1872,  
s. 498, para.  
1.  
Act X, 1872,  
s. 494, pro-  
viso.

Act X, 1872,  
ss. 504, paras.  
1 and 4, 515,  
para. 2.  
Act IV, 1877,  
ss. 212, 231.

Act X, 1872,  
ss. 505, 506.  
Act IV, 1877,  
ss. 213, 214,  
231.  
10' Km. 271.

Act X, 1872, s. 517. Proviso as to European do not apply to European  
Act IV, 1877, s. 232. vagrants. British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Act X, 1872, ss. 492, 509, para. 1, 515. Order to be made. 113. When a Magistrate acting under section 108, section 110 or section 111 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Act X, 1872, s. 492, Expl. Act IV, 1877, s. 216, para. 2. Procedure in respect of person present in Court. 114. If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

115. If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Act X, 1872, ss. 494, 515, para. 1. Act IV, 1877, s. 217, proviso. In bad livelihood cases police can arrest without warrant. Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

116. Every summons or warrant issued under section 115 shall be accompanied by a copy of the order made under section 113, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Act X, 1872, s. 495. Act IV, 1877, s. 218. Power to dispense with personal attendance. 117. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to shew cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

New. I. O'Kin. 130. See Act X, 1872, s. 491, Explns. Inquiry as to truth of information. 118. When an order under section 113 has been read or explained to a person present in Court under section 114, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 115, the Magistrate shall proceed to enquire into the truth of the information upon which he has acted.

Act X, 1872, s. 515, para. 2. Such enquiry shall be made, as nearly as may be, where the order requires security for keeping the peace, in the manner hereinafter prescribed for

conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

119. If, upon such enquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the enquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly:

Provided—

1st—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 113:

2ndly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.

3rdly—that when the person in respect of whom the enquiry is made is a minor, the bond shall be executed only by his sureties.

120. If, on an enquiry under section 118, it is not proved that there is occasion to bind over the person in respect of whom such enquiry is made to keep the peace, or to be of good behaviour, as the case may be, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the enquiry, shall release him, or if such person is not in custody shall discharge him.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

121. If any person in respect of whom an order requiring security is made under section 107 or section 119 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

122. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in either case the commission or attempt to commit, or abetment of, any offence whatever, and wherever it may be committed, is a breach of the bond.

123. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.



Act X, 1872,

ss. 489, para.

1, last sen-

tence, 490, fault of security.

last sentence,

497, 498,

499, para. 3,

510.

Act IV, 1877,

s. 223.

124. If any person ordered to give security under section 107 or section 119 does not give such security on or before the date on

which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security required.

Act X, 1872,

ss. 507, 508,

Act IV, 1877,

s. 221.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court, and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Act X, 1872,

ss. 499, para.

3.

Imprisonment for failure to give security for keeping the peace shall be simple.

Act X, 1872,

ss. 510, para.

3.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Act X, 1872,

ss. 500, 511.

Act IV, 1877,

s. 225.

125. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Act X, 1872,

s. 512.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Act X, 1872,

s. 500.

126. The Magistrate of the District may at any time, if he see sufficient cause, cancel any bond for keeping the peace executed under this chapter by order of any Court in the District not superior to his Court.

Act X, 1872,

ss. 501, 513.

Act IV, 1877,

s. 226.

127. Any security for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magis-

trate, Sub-divisional Magistrate or Magistrate of the first class to cancel the bond.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 122, 123, 124 and 125, be deemed to be an order made under section 107 or section 119 as the case may be.

## CHAPTER IX.

### UNLAWFUL ASSEMBLIES.

128. Any Magistrate or officer in charge of a Police-station, whether with-

Assembly to disperse on command of Magistrate or Police-officer.

in or without the Presidency-towns, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

129. If, upon being so commanded, any such assembly does not disperse, or if without being so commanded it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a Volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it in order to disperse such assembly or that they may be punished according to law.

130. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

131. When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Non-commissioned officer in command of any soldiers in Her Majesty's Army or of any Volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by such force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or that they may be punished according to law.



Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Act X, 1872,  
s. 487.

**132.** When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it in order to disperse such assembly, or that they may be punished according to law; but if while he is acting under this section, it becomes possible for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Act X, 1872,  
s. 488.

**133.** No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

Act X, 1872,  
ss. 483, 485,  
486.

(a) no Magistrate or Police-officer acting under this chapter in good faith,  
(b) no officer acting under section 132 in good faith,  
(c) no person doing any act in good faith in compliance with a requisition under section 129 or section 131, and  
(d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey, shall be deemed to have thereby committed an offence.

## CHAPTER X.

### PUBLIC NUISANCES.

Act X, 1872,  
s. 521, substituting  
"way" for  
"thoroughfare."

**134.** Whenever a District Magistrate, a Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way or river which may lawfully be used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, or offensive to the religious feelings of any considerable section thereof, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a state of weakness that it is likely to fall and thereby cause injury to persons passing by, and that its removal in consequence is necessary, or

that any tank or well adjacent to any such way should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank or well, within a time to be fixed in the order,

to remove such obstruction or nuisance; or  
to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or  
to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank or well, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner herein-after provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

**135.** The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may direct, and a written notice thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

**136.** The person against whom such order is made shall—

(a) perform, within the time specified in the order, the act directed thereby; or

(b) appear in accordance with such order and either show cause against the same, or apply to such Magistrate to appoint a jury to try whether the same is reasonable and proper.

"Combustible" omitted.

Act X, 1872,  
s. 522.

Act X, 1872,  
s. 524.

Act X, 1872, s. 525. 137. If such person does not perform such act

Consequence of his failing to do so. or appear and shew cause or apply for the appointment of a jury as required by section 136, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Act X, 1872, s. 527. Act XI, 1874, s. 46. 138. If he appears and shews cause against the order, the Magistrate shall take evidence in the matter.

O'Kin. 486. If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Act X, 1872, s. 523, para. 2. 139. On receiving an application under section 136 to appoint a jury, the Magistrate shall—

Act. 509. (a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

Act X, 1872, s. 524, para. 1. (b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

Act X, 1872, s. 523, para. 5. (c) fix a time within which they are to return their verdict.

Act X, 1872, s. 523, para. 3, 526, para. 1. 140. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

Act X, 1872, s. 526, para. 1. 141. When an order has been made absolute under section 137, section 138, or section 140, the Magistrate shall give notice

of the same to the person against whom the order was made and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Act X, 1872, s. 525, 526. 2. If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under this section.

142. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 141.

143. If a Magistrate making an order under section 134 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

144. A District Magistrate or Sub-divisional Magistrate or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

## CHAPTER XI.

### TEMPORARY ORDERS IN URGENT CASES.

145. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, a speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 135, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice

Act X, 1872, s. 525, para. 2.

Act X, 1872, s. 523, para. 4.

Act X, 1872, s. 523.

Act X, 1872, s. 519. Penal Code, s. 291.

Act X, 1872, s. 518, with Expt. I. O'Kin. 58.

Act X, 1872, s. 518. 1 Bon. Ap. Cr. 20.

Act X, 1872, s. 518, Expt. 2.

Disputes as  
to immove-  
able prop-  
erty.

upon the person against whom the order is directed, be passed *ex parte*.

Act X, 1872,  
s. 518, Expl.  
III.  
As to disobe-  
dience to  
such orders,  
see Penal  
Code, s. 188.  
Act X, 1872,  
s. 518, Expl.  
IV.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

5 Cal. 7.  
4 Cal. 410.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a riot or affray, the Local Government by notification in the official Gazette otherwise directs.

## CHAPTER XII.

### DISPUTES AS TO IMMOVEABLE PROPERTY.

Act X, 1872,  
s. 530.  
3 Cal. 552.

146. Whenever a District Magistrate, Sub-divisional Magistrate, or a Magistrate of the first class, is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual physical possession of the subject of dispute.

1 L.R. 3 Cal.  
320.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and then, if possible, decide whether any and which of the parties is in such possession of the said subject.

1 O'Kin. 136.  
2 O'Kin. 67,  
264.  
See 6 Cal.  
206.

If the Magistrate decides that one of the parties is in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Act X, 1872,  
s. 531.  
1 O'Kin. 86.

147. If the Magistrate decides that none of the parties is in such possession, or is unable to satisfy himself as to which of them is in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

148. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concern-

Disputes concerning  
enclosures, &c.

ing the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been ordinarily exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been so exercised during the season next before such institution.

149. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

## CHAPTER XIII.

### PREVENTIVE ACTION OF THE POLICE.

150. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

151. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

152. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Act X, 1872, s. 98, para. 1. 153. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Act X, 1872, s. 381. 154. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to the Magistrate having jurisdiction.

## PART V.

### INFORMATION TO THE POLICE AND OF THEIR POWERS TO INVESTIGATE.

#### CHAPTER XIV.

Act X, 1872, s. 112. Cf. Penal Code, s. 190. 155. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and any such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it; and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Act X, 1872, s. 113. 156. When information is given to an officer in charge of a Police-station, of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such complaint and refer the complainant to the Magistrate.

Act X, 1872, s. 110. No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial. Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

Act X, 1872, ss. 109, 114, para. 2; v. *infra*, s. 184. 157. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court

having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

158. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 157 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided that when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Provided also that, if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of these cases the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first clause of this section.

159. Every report sent to a Magistrate under section 158 shall, if the Local Government so directs, be submitted through such superior officer of Police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

160. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

161. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or



any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Act X, 1872, ss. 118, 119, paras. 1 and 2, 121. **162.** Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer all questions relating to such case put him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Act X, 1872, s. 119, para. 3, 121. **163.** No statement, other than a dying declaration, made by any person to the police in the course of an investigation under this chapter shall be used as evidence against the accused or shall, if reduced into writing, be signed by the person making it.

Act X, 1872, s. 120, 184. **164.** No Police-officer or other person in authority shall offer or make any inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

Nelson, 118. But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will.

Act X, 1872, s. 122. **165.** Any Magistrate not being a Police-officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

I. L. R., 1 Bom. 219. Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and he shall make a memorandum at the foot thereof to the following effect:—

“I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

“(Signed) A. B.,  
“Magistrate.”

**166.** Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons under section 95 has been or might be addressed will not or would not produce such document or other thing as directed in the summons, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

**167.** An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 166, and shall forward the thing found, if any, to the officer at whose request the search was made, unless the place at which such thing is found is in a different District, and is nearer to the Magistrate having jurisdiction in such place than to the station of which the latter officer is in charge. In such case the thing shall be taken before such Magistrate, who, unless there be good cause to the contrary, shall order such thing to be forwarded to such officer.

**168.** Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate, unless, for reasons to be recorded by such officer, he thinks that the accused should not be so forwarded.

The Magistrate receiving a copy under this section may, whether he has or has not jurisdiction to try the case, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is subordinate.

X, 1872, s. 123, para. 2. **169.** When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Report of investigation by subordinate Police-officer.

X, 1872, s. 125. **170.** If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate having jurisdiction to take cognizance of the offence on a police report.

Release of accused when evidence deficient.

X, 1872, s. 123, para. 127, para. 130, paras. 1 & 2. **171.** If upon an investigation under this chapter it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report, or if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as may be necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, it shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided notice of such reference be given to such complainant or witness.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

**172.** No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer, Act X, 1872, s. 130, last para.

Complainants and witnesses not to be required to accompany Police-officer.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond: Act X, 1872, s. 131, para. 1.

Complainants and witnesses not to be subjected to restraint.

Provided that, if any complainant or witness refuses to attend or to execute the bond directed in section 171, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such recognizance, or until the hearing of the case is completed. Act X, 1872, s. 131, para. 2.

Recurrent complainant or witness may be forwarded in custody.

**173.** Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation. Act X, 1872, s. 126.

Diary of proceedings in investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for them, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them, to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, sections 145 and 161, shall apply.

**174.** Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to a Magistrate having jurisdiction to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of Act X, 1872, ss. 125, 127, paras. 1 & 2.

Report of Police-officer.

the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of police has been appointed under section 159, the report shall be submitted through him, and he may, pending the orders of the Magistrate, direct the officer in charge of the Police-station to make further investigation.

*Whenever it appears from a report forwarded under this section, that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.*

Act X, 1872, s. 133. 175. The officer in charge of a Police-station, on receiving information that

Police to inquire and report on unnatural and sudden deaths.

- (a) has been killed by another, or
- (b) has died under suspicious circumstances, or
- (c) has committed suicide,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the territories respectively administered by the Governors of Fort St. George and Bombay in Council, investigations under this section may be made by the Head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

176. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognizable offence to which section 171 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

177. When any person dies while in the custody of the police the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in section 175, clauses (a), (b) and (c), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

Power to disinter corpses.

## PART VI.

### PROCEEDINGS IN PROSECUTIONS.

#### CHAPTER XV.

#### OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

##### A.—Place of Inquiry or Trial.

178. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

179. Notwithstanding anything contained in section 178, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division.

This power may be exercised so as to save Military Courts & Inquests.

Act X, 1872, s. 134.

Penal Code, ss. 174, 175.

Act X, 1872, s. 135.

New Code, IV, s. 11.

Act X, s. 63, Act IV, s. 18.

Act X, s. 63, Act IV, s. 18.

Act XI, 1874, s. 9. Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 537.

Act X, 1872, s. 65. 180. When a person is accused of the commis-  
Act IV, 1877, s. 19. sion of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

*Illustrations.*

(a) A is wounded in district X and dies in district Z. The offence of the culpable homicide of A may be inquired into and tried either in X or Z.

(b) A is wounded in district X, and is, during ten days in district Y and during ten days more in district Z, unable in either Y or Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into and tried in X, Y or Z.

(c) A is put in fear of injury in district X, and is thereby induced, in district Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either in X or Y.

Act X, 1872, s. 66, omit-  
ting Illustration (d). 181. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into and tried by a Court within the local limits of whose jurisdiction either act was done.

*Illustrations.*

(a) A charge of abetment may be inquired into and tried either in the district in which the abetment was committed, or in the district in which the offence abetted was committed.

(b) A charge of receiving or retaining stolen goods may be inquired into and tried either in the district in which the goods were stolen, or in any district in which any of them were at any time dishonestly received or retained.

(c) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried in the district in which the wrongful concealing, or in the district in which the kidnapping, took place.

Act X, 1872, s. 67, Illustration (c). 182. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into and tried by a Court within the local limits of whose jurisdiction the person charged is.

Act X, 1872, s. 67, Illustration (e). The offence of criminal misappropriation or of criminal breach of trust may be inquired into and tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Place of inquiry or trial where scene of offence is uncertain; 183. When it is uncertain in which of several local areas an offence was committed, or

or not in one district only; where an offence is committed partly in one local area and partly in another, or

or offence is continuing; where an offence is a continuing one, and continues to be committed in more local areas than one, or

or consists of several acts. where it consists of several acts done in different local areas,

it may be inquired into and tried by a Court having jurisdiction over any such local area.

184. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into and tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

185. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office and Arms Acts, or Arms and Ammunition may be inquired into and tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

186. Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

187. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered, in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits an offence which cannot, under the provisions of sections 178 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under

Act X, 1872, s. 67, Illustration (f). I. L. R. 1 Mad. 17.

Act XVIII, 1862, ss. 29-35. Act X, 1872, s. 67, omitting the Illustrations. Act IV, 1877, s. 21.

Act X, 1872, s. 67, Illustration (a). I. Mad. II. C. Rep. 193.

Act IV, 1877, s. 238. Act LII, 1860, repealed.

Act IV, 1877, s. 239.

Act X, 1872, s. 69. Act IV, 1877, s. 23.

Act X, 1872, s. 157. Act IV, 1877, s. 54.



Act X, 1872,  
s. 174.  
Act IV, 1877,  
s. 55.

Act XXIII,  
1840, s. 7.

some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinafter provided to appear before him, and send him to the Magistrate having jurisdiction to enquire into or try such offence, or, if such offence is bailable, take bail for his appearance before such Magistrate.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Act X, 1872,  
s. 176.

**188.** If the person has been arrested under a warrant issued under section 187 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 187, such Magistrate shall send such person to the District Magistrate or Sub-divisional Magistrate to whom such Court is immediately subordinate.

Act XXI,  
1879, s. 9.

**189.** When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar against further proceedings against him under this Code in respect of the same offence in any territory beyond the limits of British India.

**190.** Whenever any such offence as is referred to in section 189 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

**191.** In sections 189 and 190 the expression "Political Agent" means and includes—

(a) the principal officer representing the British Indian Government in any territory beyond the limits of British India:

(b) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

#### B.—Conditions requisite for Initiation of Proceedings.

**192.** Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police-report of such facts;

(c) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may specially empower any Magistrate to take cognizance under clause (a) or clause (b) of offences.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (c) of offences.

**193.** Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

When any Magistrate of the first class specially empowered in this behalf by the Magistrate of a District has taken cognizance of any case, he may transfer it for inquiry or trial to any other Magistrate in such District competent to deal with it under this Code.

Act XXI,  
1879, s. 10.

Act XXI,  
1879, s. 3.

Act X, 1872,  
ss. 140, (a), (b), (c), para. 1.  
Act IV, 1877,  
ss. 25, 26.

Act X, 1872,  
ss. 140, (a), (b), para. 1.  
Act IV, 1877,  
ss. 25, 26.

Act X, 1872,  
ss. 25, 26.

Act X, 1872,  
ss. 25, 26.  
Act XI, 1875,  
s. 6.

Act X, 1872, s. 231. 194. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused person has been committed by a Magistrate duly empowered in that behalf.

Act X, 1872, s. 17. Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Act X, 1872, s. 18. Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division makes over to them by general or special order.

Act X, 1875, s. 145. 195. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Charter, 1865, clause 24. Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

Act X, 1872, s. 467. 196. No Court shall take cognizance—

Act X, 1875, s. 133. (a) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate ;

Act X, 1872, s. 468. (b) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in or in relation to any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate ;

Act X, 1872, s. 469. (c) of any offence described in section 463 or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Act X, 1872, s. 470, para. 1. The sanction referred to in this section may be expressed in general terms, and need not name the accused person ; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

per West, J. No appeal from order according sanction, I. L. R. 1 All. 17.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may amend the charge to one of any other offence so referred to which is disclosed by the facts.

Any sanction given under this section may be revoked by any authority to which the authority giving it is subordinate.

For the purposes of this section every Court shall be deemed to be subordinate to the Court to which appeals from the former Court ordinarily lie.

197. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

198. No Court shall take cognizance of any offence of which any Judge, or any public servant not removable from his office or the Local Government, is accused as such Judge or public servant, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

199. No Court shall take cognizance of an offence falling under Chapter XIX or XXI or under sections 493 to 496 (both inclusive) of the Indian Penal Code, except upon a complaint made by some person aggrieved by such offence.

200. No Court shall take cognizance of an offence under section 497 or 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

## CHAPTER XVI.

### OF COMPLAINTS TO MAGISTRATES.

201. A Magistrate taking cognizance of a case on complaint shall at once examine the complainant upon oath, and the examination shall be reduced into writing and shall be

Act X, 1872, signed by the complainant, and also by the Magistrate: s. 44, para. 2.

*Provided that when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 193:*

Act IV, 1877, s. 30. *Provided also that where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:*

Act X, 1872, s. 44, para. 2. *Provided also that, when the case has been transferred under section 193 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.*

Act X, 1872, s. 145. *202. If the Magistrate is not competent to entertain the complaint, and Procedure by Magistrate not empowered to entertain complaint. such complaint has been made in writing, he shall return it for presentation to the proper tribunal with an endorsement to that effect.*

Act X, 1872, s. 146. *203. If any Presidency Magistrate or Magistrate of the first or second class sees reason to distrust the truth of a complaint of which he is authorized to take cognizance, he may, when the complainant has been examined, postpone the issue of process for compelling the attendance of the person complained against, and may direct a previous local investigation to be made by means of any officer immediately subordinate to such Magistrate or of a Police-officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.*

*If such investigation is made by means of some person other than an officer exercising any of the powers of a Magistrate or a Police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.*

Act X, 1872, s. 147, para. 1. *204. The Magistrate before whom a complaint is made may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 203, there is in his judgment no sufficient ground for proceeding.*

## CHAPTER XVII.

### OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

Act X, 1872, ss. 147, para. 3, 148, para. 1, 149. *205. If in the opinion of a Magistrate taking cognizance of a case there is sufficient ground for proceeding and the case appears to be one in which according to the fourth column of the second schedule a summons should issue in the first instance, he shall*

*issue his summons. If the case appears to be one in which according to that column a warrant should issue in the first instance, he shall ordinarily issue his warrant for causing such person to appear or be brought at a certain time and place before such Magistrate or some other Magistrate having jurisdiction.*

*Nothing in this section shall be deemed to affect the provisions of section 91.* Act X, 1872, ss. 148, para. 2, 150.

*206. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.* Act X, 1872, s. 151. Act IV, 1877, s. 37.

*But such Magistrate may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.* Act IV, 1877, s. 37.

## CHAPTER XVIII.

### OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

*207. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.* Act X, 1872, s. 143, extended to High Court.

*But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.*

*208. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court or, in the opinion of the Magistrate, ought to be tried by such Court.* Act X, 1872, s. 189. Act IV, 1877, s. 81.

*209. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.* Act X, 1872, s. 190. Act IV, 1877, s. 82.

*If the complainant or accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.* Act X, 1872, ss. 357, para. 1, s. 83, para. 2.

*Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.*

Act X, 1872,  
s. 195.  
Act XI, 1874,  
s. 14.  
Act IV, 1877,  
s. 87, omit-  
ting the Ex-  
planations.

**210.** When the evidence referred to in section 209, paragraphs 1 and 2, has been taken, and he has examined the accused in regard to such matters connected with the accusation as the Magistrate thinks fit, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

*Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.*

Act X, 1872,  
s. 195.  
Explan. III,  
196, 198,  
para. 1.  
Act IV, 1877,  
s. 88.  
Act IV, 1877,  
s. 89, omit-  
ting paras.  
3 and 4.  
Act X, 1872,  
s. 199.  
Act X, 1875,  
s. 13.  
Act IV, 1877,  
s. 90.

**211.** When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

Act X, 1872,  
s. 200, paras.  
1 and 3.  
Act IV, 1877,  
s. 91.

**212.** The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time, and nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial before the High Court, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Act X, 1872,  
s. 200.  
Act IV, 1877,  
s. 91.

**213.** The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 212.

Act X, 1872,  
s. 198, para.  
200, para.  
Act IV, 1877,  
s. 91.

**214.** When the accused on being required to give in a list under section 212 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 213, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) recording the reasons for such commitment.

**215.** If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him to take his trial before the High Court, and not before the Court of Session.

**216.** A commitment once made under section 214 or 215 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

**217.** When the accused has given in any list of witnesses under section 212 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed:

Provided that where such person has been committed to the High Court, the Magistrate may in his discretion leave such witnesses to be summoned by the Clerk of the Crown:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that such witness is material, and if he is not so satisfied, may refuse to summon the witness, or before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

**218.** Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the recognizance above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Act X, 1872,  
s. 197, omit-  
ting the Ex-  
planation.

Act X, 1872,  
s. 197, Ex-  
planation  
and last  
para.

Act X, 1872,  
s. 353.  
Act IV, 1877,  
s. 92.

Act X, 1872,  
s. 359.

L. R. 3  
Cal. 532.

Act X, 1872,  
s. 360.  
Act IV, 1877,  
s. 93.



*The Charge.*

Act X, 1872,  
s. 202, para.  
1.

**219.** When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge,

Act XI, 1874,  
s. 15.

and shall send the charge, the record of the enquiry and any weapon or other moveable thing which is to be produced in evidence to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Act X, 1872,  
s. 198, paras.  
2, 3 and 4.

Charge, &c., to be forwarded to High Court or Court of Session. is to be produced in evidence to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Act X, 1872,  
s. 198, para.  
4.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Act X, 1872,  
s. 357, para.  
2.

Act IV, 1877,  
s. 91, para.  
4.

**220.** The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Act X, 1875,  
s. 26.

Act IV, 1877,  
s. 89, para.  
3.

See sec. 552,  
*infra*.

**221.** Pending the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

*Form of Charges.*

See s. 565, *infra*.

Act X, 1872,  
s. 439, paras.  
1 to 6.

Act IV, 1877,  
s. 94.

**222.** Every charge under this Code shall state the offence with which the accused is charged.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact of the previous conviction must be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

*Illustrations.*

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300; or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(b) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

**223.** The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

**224.** When the nature of the case is such that the particulars mentioned in sections 222 and 223 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

*The Charge.*

Act X, 1872,  
s. 118.

Act X, 1872,  
s. 439, para.

Act IV, 1877,  
s. 94, para.

Act X, 1872,  
s. 439, illustrations.

Act IV, 1877,  
s. 94, illustrations.

Act X, 1872,  
s. 440.

Act IV, 1877,  
s. 95.

Act X, 1872,  
s. 441.

Act IV, 1877,  
s. 96.

Illustrations.

(a) *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b) *A* is accused of cheating *B* at a given time and place. The charge must set out the manner in which *A* cheated *B*.

(c) *A* is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by *A* which is alleged to be false.

(d) *A* is accused of obstructing *B*, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

(e) *A* is accused of the murder of *B* at a given time and place. The charge need not state the manner in which *A* murdered *B*.

(f) *A* is accused of disobeying a direction of the law with intent to save *B* from punishment. The charge must set out the disobedience charged and the law infringed.

Act XVIII,  
1862, s. 82.

225. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

226. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Act X, 1872,  
s. 443.  
Act X, 1875,  
s. 24.  
Act IV, 1877,  
s. 98.

Illustrations.

(a) *A* is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that *A* was in fact misled by this omission, the error shall not be regarded as material.

(b) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge, or is set out incorrectly. *A* defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) *A* is charged with cheating *B*, and the manner in which he cheated *B* is not set out in the charge. There were many transactions between *A* and *B*, and *A* had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d) *A* is charged with the murder of Khoda Baksh on the 21st January. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January. *A* was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that *A* was not misled, and that the error in the charge was immaterial.

(e) *A* was charged with murdering Haidar Baksh on the 20th January and Khoda Baksh (who tried to arrest him for that murder) on the 21st January. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that *A* was misled, and that the error was material.

227. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

228. Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

229. If the charge framed or alteration made under either of the two last preceding sections is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

230. If the new or altered charge is such that when new trial may be directed, or trial suspended, the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

231. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered charge is founded.

232. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined.

233. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be pre-

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ferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

Act XI, 1874, s. 40. *A* is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that *A* had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that *A* had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Act X, 1872, s. 452. **234.** There must be a separate charge for every distinct offence of which any person is accused, and every such charge must be tried separately, except in the cases mentioned in sections 235, 236, 237 and 240.

Illustration.

*A* is accused of a theft on one occasion, and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and the causing grievous hurt.

Act X, 1872, s. 453, omitting the Explanation. **235.** When a person is accused at the same time of more offences than one of the same kind, committed within one year of each other, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Act X, 1872, s. 454, omitting Illustrations (a), (b), (c) and (d). **236. I.**—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Act X, 1875, s. 19. Act IV, 1877, s. 107. **II.**—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

**III.**—If several acts, of which one or more than one would by itself constitute an offence, form, when combined, a different offence, the person accused of them may be charged with and tried at one trial for every such offence, or any of such different offences.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations

to paragraph I—

(a) *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose cus-

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tody *B* was. *A* may be charged with and tried for offences under sections 225 and 333 of the Indian Penal Code.

(b) *A* commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(c) *A* entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(d) *A* has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. *A* may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e) With intent to cause injury to *B*, *A* institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses *B* of having committed an offence knowing that there is no just or lawful ground for such charge. *A* may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(f) *A*, with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(g) *A*, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. *A* may be separately charged with, and convicted of, offences under sections 147 and 325 and 162 of the Indian Penal Code.

(h) *A* threatens *B*, *C* and *D* at the same time with injury to their persons with intent to cause alarm to them. *A* may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in illustrations (a) to (h) respectively may be tried at the same time.

to paragraph II—

(i) *A* wrongfully strikes *B* with a cane. *A* may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(j) Several stolen sacks of corn are made over to *A* and *B*, who know they are stolen property, for the purpose of concealing them. *A* and *B* thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(k) *A* exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. *A* may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(l) *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 167 of the Indian Penal Code. *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to paragraph III—

(m) *A* commits robbery on *B*, and, in doing so, voluntarily causes hurt to him. *A* may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

Act X, 1872, s. 455.  
Act X, 1875, s. 20.  
Act IV, 1875, s. 108.  
N.W.P., 1875, p. 137.

**237.** If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences; and any number of such charges may be tried at once, or he may be charged in the alternative with having committed some one of the said offences.

*Illustration.*

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

Act X, 1872, s. 456.  
Act X, 1875, s. 21.  
Act IV, 1877, s. 100.

**238.** If, in the case mentioned in section 237, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

*Illustration.*

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

Act X, 1872, s. 457.  
Act X, 1875, s. 22.  
Act IV, 1877, s. 110.  
11 Bom. 241, per West, J.

**239.** When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

*When a person charged with an offence proves circumstances which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.*

*Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 199 or section 200 when no complaint has been made as required by that section.*

*Illustrations.*

(a) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

Suth. Cr. 61.  
(b) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of the Penal Code.

Act X, 1872, s. 458.  
Act X, 1875, s. 23.  
Act IV, 1877, s. 111.

**240.** When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit, and the provisions contained in the former part of this chapter shall apply to all such charges.

*Illustrations.*

(a) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(b) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(c) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

**241.** When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw, or such Court of its own accord may suspend the inquiry into, or trial of, the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges.

Act X, 1872, s. 459, omitting the first ten words "In trials before a Court of Session or High Court," and inserting "the complainant."  
Act X, 1875, s. 102.  
Act IV, 1877, s. 112.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

**242.** The following procedure shall be observed by Magistrates in the trial of summons-cases.

Act X, 1872, s. 203, para. 1.  
Act IV, 1877, s. 114.

**243.** When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but no formal charge shall be framed.

Act X, 1872, s. 203, para. 2, first clause, 206, para. 1.  
Act IV, 1877, s. 119.

**244.** If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Act X, 1872, s. 206, para. 2.  
Act IV, 1877, s. 120.

**245.** If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as

Act X, 1872, s. 207.  
Act IV, 1877, s. 121.



Trial of  
Summons-  
cases by  
Magis-  
trates.

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Act X, 1872, s. 361.  
Act IV, 1877, s. 142.  
The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 211, paras. 1 and 2.  
Act IV, 1877, s. 126.  
246. If the Magistrate upon taking the evidence referred to in section 245 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Act X, 1872, s. 203, para. 2, second clause.  
Act IV, 1877, s. 117.  
Nelson, 206.  
247. A Magistrate may, under section 244 or section 246, convict the accused of any offence triable under this chapter which from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or summons.

Act X, 1872, s. 205, 208, para. 3, 212.  
Act IV, 1877, s. 118.  
248. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Act X, 1872, s. 210.  
Act IV, 1877, s. 125.  
249. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

New.  
250. In any case instituted otherwise than upon complaint, a Presidency Magistrate or Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction.

Act X, 1872, s. 209, paras. 1 and 2.  
Act IV, 1877, s. 242.  
251. If in any case instituted upon complaint a Magistrate acquits the accused under section 246 or section 248, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than

one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

The sum so awarded shall be recoverable as if it were a fine; and if it cannot be so recovered, the complainant shall be sentenced to simple imprisonment for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

252. The following procedure shall be observed by Magistrates in the trial of warrant-cases. Act X, 1872, s. 213.

253. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution. Act X, 1872, s. 190.  
Evidence for prosecution. See I. L. R., 3 Cal., 389.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary. Act X, 1872, s. 362, para. 1.  
Act IV, 1877, s. 148, para. 1.

254. If upon taking all the evidence referred to in section 253, and such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him. Act X, 1872, s. 215, with Explan. III.  
I. L. R., 3 Cal., 389.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

255. If, when such evidence and examination have been wholly or partially taken, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. Act X, 1872, s. 216, with Explan. I, II, & III.  
Act XI, 1874, s. 16.  
Act IV, 1877, s. 118, 122.

256. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. Act X, 1872, s. 217.  
Act V, 1857, s. 120, 122.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon. Cf. Act X, 1872, s. 237, para. 2, 324.

Act X, 1872,  
s. 218.  
Act IV, 1877,  
s. 121.

**257.** If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to

enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

If the accused puts in any written statement, the Magistrate shall file it with the record.

Act X, 1872,  
s. 362, para. 2.

**258.** If the accused applies to the Magistrate

Act IV, 1877,  
s. 143, para. 2.

Process for production of evidence for defence. to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded by him in writing, he considers that such application should be refused.

Act IV, 1877,  
s. 209.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872,  
s. 220, omitting the Explanation.

**259.** If in any case under this chapter in which a charge has been framed

Act IV, 1877,  
s. 126, first half.

the Magistrate finds the accused not guilty, he shall record an order of acquittal.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Act X, 1872,  
s. 215, Expl.

**260.** When the proceedings have been instituted upon complaint and

Act IV, 1877,  
s. 118.

upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the

Act IV, 1877,  
s. 133 of same.

Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

## CHAPTER XXII.

### OF SUMMARY TRIALS.

Act X, 1872,  
s. 222, 223, 224.

**261.** Notwithstanding anything contained in this Code, the District Magistrate and any Magistrate

of the first class specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences:—

R. 3 Cal.

(a) Offences not punishable with death, transportation, whipping, or imprisonment for a term exceeding six months;

(b) Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(c) Hurt, under section 323 of the same Code;

(d) Theft, under section 379, 380 or 391 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(e) Receiving, or retaining stolen property, under section 411 of the same Code, when the value of such property does not exceed fifty rupees;

(f) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, when the value of such property does not exceed fifty rupees;

(g) Mischief, under section 427 of the same Code;

(h) House-trespass, under section 448 of the same Code;

(i) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code;

(j) Abetment of any of the foregoing offences;

(k) An attempt to commit any of the foregoing offences when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

**262.** The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try

Power to invest Bench of Magistrates invested with less power.

summarily all or any of the following offences:—

(a) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(b) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(c) Abetment of any of the foregoing offences;

(d) An attempt to commit any of the foregoing offences when such attempt is an offence.

**263.** In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Procedure for summons and warrant-cases applicable with certain exceptions.

shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

**264.** In cases where no appeal lies, the Magistrate or Bench of Magistrates

Record in cases where there is no appeal.

need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

(a) the serial number;

(b) the date of the commission of the offence;

(c) the date of the report or complaint;

(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of or proved;

(g) the plea of the accused and his examination (if any);

(h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

Act X, 1872,  
s. 227.

- (i) the sentence or other final order ; and  
(j) the date on which the proceedings terminated.

Act X, 1872, s. 228. **265.** In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 264.

Record in appealable cases.  
Such judgment shall be the only record in cases coming within this section.

Act X, 1872, s. 229. **266.** Records made under section 264 and judgments recorded under section 265 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Act X, 1872, s. 230. The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

## CHAPTER XXIII.

### OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

#### A.—Preliminary.

Act X, 1875, s. 3. **267.** In this chapter, except in section 308, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may from time to time, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Act X, 1875, s. 32. **268.** All trials under this chapter before a High Court shall be by jury ;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so direct, be by jury.

Act X, 1872, s. 282. **269.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Act X, 1872, s. 233, paras. 1 and 2. **270.** The Local Government may by order in the official *Gazette* direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be

by jury in any District, and from time to time revoke or alter such order.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for each offence.

**271.** In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. Act X, 1872, s. 235.

Trial before Court of Session to be conducted by Public Prosecutor.

#### B.—Commencement of Proceedings.

**272.** When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried. Act X, 1872, s. 237.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon. Act X, 1875, s. 73.

**273.** If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case: Act X, 1872, s. 238.

Refusal to plead or claim to be tried. Act X, 1875, s. 80.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit. Act X, 1872, s. 239.

**274.** When it appears to the Court at any time before the commencement of the trial of the person charged, that there is no legal evidence to sustain any charge or a portion thereof, the Judge may make on the charge an entry to that effect. Act X, 1875, s. 14.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

#### C.—Choosing a Jury.

**275.** In trials before the High Court the jury shall consist of nine persons. Act X, 1875, s. 33.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may from time to time direct. Act X, 1872, s. 236.

**276.** In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans. Act X, 1872, s. 241.

**277.** The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct: Act X, 1872, s. 240.

Jurors to be chosen by lot.

to practice in High Court, Bangalore, 1st Dec. 1892.

Proviso.

Provided that—

Act X, 1875, s. 49. 1st, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed.

Act X, 1872, s. 243, para. 3. Existing practice maintained. 2nd, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Act X, 1875, s. 33. Persons not summoned when eligible. 3rd, in the Presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

Act X, 1872, s. 243, para. 1 and 2. 278. As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Act X, 1875, s. 47, para. 1. Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Act X, 1872, s. 244, 405, 406. 279. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

(a) some presumed or actual partiality in the juror;

(b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(c) his having by habit or religious vows relinquished all care of worldly affairs;

(d) his holding any office in or under the Court;

(e) his executing any duties of Police or being entrusted with Police-duties;

(f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

I, 1872, 245. I, 1875, 57. (g) inability to understand the language in which the evidence is given, or when such evidence is interpreted, the language in which it is interpreted;

(h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

280. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final. Act X, 1872, s. 243, para. 3. Act X, 1875, ss. 48, 55.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 277; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 279 and allowed.

281. When the jurors have been chosen, they shall appoint one of their number to be foreman. Act X, 1872, s. 246. Act X, 1875, s. 58.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

282. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

283. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not possible to enforce his attendance, a new juror shall be added, or the jury shall be discharged and a new jury chosen. Act X, 1872, s. 254.

In each of such cases the trial shall commence anew.

284. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar. Act X, 1875, s. 99.

#### D.—Choosing Assessors.

285. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such. Act X, 1872, s. 239.

286. If, in the course of a trial with the aid of assessors, at any time prior to the finding, any assessor is, from any sufficient cause, prevented from attending throughout



the trial, or absents himself, and it is not possible to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending or absent themselves, the proceeding shall be stayed, and a new trial shall be held with the aid of fresh assessors.

*E.—Trial to Close of Cases for Prosecution and Defence.*

Act X, 1872, s. 247. 287. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

The prosecutor shall then examine his witnesses.

Act X, 1872, s. 248. 288. The examination of the accused before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Act X, 1872, s. 249. 289. The evidence of a witness taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

The exercise of this discretion may be reviewed on appeal, 11 Bom. 282.

Act X, 1872, s. 251, paras. 1 and 2. 290. When the examination of the witnesses for the prosecution and the examination (if any) of the accused is concluded, the accused shall be asked whether he means to adduce evidence.

In such case it is not necessary to ask the assessors their opinion. —I. L. R., 1 All., 610, n. If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no legal evidence to sustain the charge, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of the accused (when there are several), says that he means to adduce evidence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is legal evidence to sustain the charge, the Court shall call on the accused to enter on his defence.

Act X, 1872, s. 251, para. 3. 291. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses, if any, and after their cross-examination and re-examination (if any) may sum up his case.

Act X, 1872, s. 253. 292. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but

he shall not, except as provided in section 212, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

293. If the accused, or any of the accused, has stated, when asked under section 290, that he means to adduce evidence, the prosecutor shall be entitled to reply. Act X, 1872, s. 252. Act X, 1875, s. 63.

294. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court. Act X, 1872, s. 253. Act X, 1875, s. 64. Taken from Livingston, Art. 357.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

295. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness. Act X, 1872, s. 258. Act X, 1875, s. 69.

296. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial. Act X, 1872, s. 260. Act X, 1875, s. 67.

297. The High Court may from time to time make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes. Act X, 1872, s. 65.

*F.—Conclusion of Trial in Cases tried by Jury.*

298. In cases tried by jury, when the case for the defence, and the prosecutor's reply, if any, are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided. Act X, 1872, s. 255. Act X, 1875, s. 90.

299. In such cases, it is the duty of the Judge— Act X, 1872, s. 256. Act X, 1875, s. 91.

(a) to decide all questions of law, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by or on behalf

of the parties which may arise in the course of the trial, and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall be final.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

*Illustrations.*

(a) It is proposed to prove a statement made by a person not called as a witness under circumstances which render evidence of his statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Act X, 1872, s. 257.  
Act X, 1875, s. 93.

Duty of jury.

300. It is the duty of the jury—

(a) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(b) to determine the meaning of all technical terms (*other than terms of law*) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

*Illustrations.*

(a) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Act X, 1872, s. 263, para. 1.  
Act X, 1875, s. 93.

301. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

302. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

303. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

304. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Such questions and the answers to them shall be recorded.

305. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

306. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

307. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

308. If in any such case the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, record-

Act X, 1872, s. 263, para. 1.  
Act X, 1875, s. 94.

Act X, 1872, s. 263, para. 2.  
Act X, 1875, s. 95.  
I. L. R. 6 Cal. 351 (where the jury are unanimous).

Act X, 1872, s. 263, para. 2.  
Act X, 1875, s. 95.

Act X, 1872, s. 263, para. 2, last sentence.

Now. Deora. C. C. 229.

Act X, 1875, ss. 97, 98.

Act X, 1872, s. 263, para. 4.

Act XI, 1871, s. 21.

Act X, 1872, s. 263, paras. 5 and 6.  
Act XI, 1871, s. 21.  
I. L. R. 1 Bom. 110.  
The dissent must be complete.  
I. L. R. 220  
Bom. 520

ing the grounds of his opinion and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

I. L. R., 3  
Calc., 623.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

See Markby,  
J., in I. L.  
R., 3 Calc.,  
192.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and if it convict him, may pass such sentence as might have been passed by the Court of Session.

**G.—Re-trial of Accused after Discharge of Jury.**

Act X, 1875,  
s. 100.

**309.** Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

**H.—Conclusion of Trial in Cases tried with Assessors.**

Act X, 1872,  
s. 255,  
para. 1,  
261, 262.

**310.** When in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall require each of the assessors to state his opinion orally, and shall record such opinion.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinion of the assessors.

**I.—List of Jurors for High Court and summoning Jurors for that Court.**

Act X, 1875,  
s. 39.

**311.** The jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter;

and those persons whose names are entered in the said book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Act X, 1875,  
s. 40.

**312.** The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Act X, 1875,  
s. 41.

All persons whose names are entered in the special jurors' list shall be exempted from serving on any other than special juries but so long only as their names are contained in such list.

**313.** The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

Act X, 1875,  
s. 42.

(a) a list of all persons liable to serve as common jurors; and  
(b) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Calcutta, and in the case of other High Courts the Local Government, may exempt any salaried officer of Government from serving as a juror.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

**314.** Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

**315.** Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No persons shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

**316.** Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the

Act X, 1875,  
s. 50.

Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Act X, 1875,  
s. 51.

**317.** In addition to the persons so summoned as jurors, the said Court of Session shall, if it think need-

Military jurors.

ful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Act X, 1875,  
s. 46.

**318.** Any person summoned under section 315, 316 or 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

*J.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

Act X, 1872,  
s. 404.

**319.** All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors and assessors at any trial held within the District in which they reside.

Liability to serve as jurors and assessors.

Act X, 1872,  
s. 244, 403,  
406, para. 1.

**320.** The following persons are exempt from liability to serve as jurors or as assessors, namely:—

Exemptions.

- (a) Officers in civil employ superior in rank to a District Magistrate;
- (b) Judges;
- (c) Commissioners and Collectors of Revenue or Customs;
- (d) Persons engaged in the Preventive Service in the Customs Department;
- (e) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;
- (f) Persons actually officiating as priests or ministers of their respective religions;
- (g) Persons in Her Majesty's Army except when, by any law in force for the time being, they

are specially made liable to serve as jurors or assessors;

(h) Surgeons and others who openly and constantly practise the medical profession;

(i) Persons employed in the Post-office and Telegraph Departments;

(j) Persons exempted by the Local Government from liability to serve as jurors, and persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.

**321.** The Sessions Judge and the Collector of the District, or such other officer as the Local Government appoints in this behalf,

shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors, qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 279, clauses (b) to (h), both inclusive.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is a European or an American, the list shall mention the race to which he belongs.

**322.** Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

**323.** To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

**324.** For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may claim the exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.



*Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.*

Act X, 1872,  
s. 403.

**325.** The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Act X, 1872,  
s. 407.

**326.** The Sessions Judge shall ordinarily, three days at least before the time fixed for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any case about to be tried at such sessions.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Act X, 1872,  
s. 410.

**327.** The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Act X, 1872, s.  
409, para. 1.

**328.** Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Act X, 1872,  
s. 411.

**329.** If any person summoned to serve as a juror or assessor be in the service of Government or of a Railway Company, the Court may excuse his attendance if it appear, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Act X, 1872,  
s. 412.

**330.** The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Act X, 1872,  
s. 413.

**331.** At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors or assessors at such session.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

**332.** Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Penalty for non-attendance of juror or assessor.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

#### K.—Special Provisions for High Courts.

**333.** At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal.

**334.** For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

**335.** The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, and as the Local Government in the case of the other High Courts, may direct.

But it may from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of

the original criminal jurisdiction of the High Court.

Act X, 1875,  
s. 27.

**336.** The High Court may direct that all European British subjects and persons liable to be tried by it under section 215, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court,

or direct that they shall be tried at a particular place named.

## CHAPTER XXIV.

### GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Act X, 1872,  
s. 347.  
Act IV, 1877,  
s. 150.

**337.** The District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the case, or, with the sanction of the District Magistrate, any other Magistrate, may, in any warrant-case, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned in the perpetration thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial.

Every Magistrate, other than a District Magistrate or a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which such person appears to have committed may be triable by such Magistrate.

Act X, 1872,  
s. 348, omit-  
ting "as a  
Court of Re-  
vision."

**338.** At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person

**339.** Where a pardon has been tendered under section 327 or 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person under pardon may be given in evidence against him when the pardon has been withdrawn under this section.

**340.** Every person accused before any Criminal Court may of right be defended by a pleader.

**341.** If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

**342.** At any stage of any inquiry or trial the Court may, without previously warning the accused, put such questions to him as the Court considers necessary.

The accused shall not render himself liable to punishment for refusal to answer such questions, or for giving false answers to them; but the Court and the jury (if any) shall draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be put in evidence for or against him, not only in such inquiry or trial, but also in any other inquiry into, or trial for, any other offence which such answer may tend to show he has committed.

No oath shall be administered to the accused.

**343.** Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Act X, 1872,  
s. 349.  
Act X, 1875,  
s. 78.  
Act IV, 1877,  
s. 151.  
7 Cal., 66.

Act X, 1872,  
s. 186, paras.  
1 and 2.  
Act XI, 1874,  
s. 13.  
Act X, 1875,  
s. 81.  
Act IV, 1877,  
s. 130.

Act X, 1872,  
s. 186, para.  
3.  
Act X, 1875,  
s. 130.  
Act IV, 1877,  
s. 131.

Act X, 1872,  
ss. 193, para.  
1, 250, 342.  
Act X, 1875,  
s. 61.  
Act IV, 1877,  
ss. 5, 148.  
6 Cal., 521.  
1 O'Kin., 436.

Act X, 1872,  
ss. 193, para.  
2, 343; see  
Act I, 1872,  
s. 114, III.  
(4).

Act X, 1872,  
s. 193, Ex-  
pla.

Act X, 1872,  
s. 345.

Act X, 1872,  
s. 344.  
Act IV, 1877,  
s. 149.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and by a warrant remand the accused if in custody :

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table :—

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Causing hurt ...	323, 334, 337, 338	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	352, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour.	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ...	447	The person in possession of the property trespassed upon.
House-trespass ...	448	

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Criminal Breach of Contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery ...	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman.	498	
Defamation ...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal Intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt or cheating, punishable under section 324, section 335 or section 417 of the Indian Penal Code may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused, or by the person cheated, as the case may be.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

**346.** If, in the course of an inquiry or trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

**347.** If in any enquiry before a Magistrate or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

**348.** Whoever, having been convicted of an offence punishable under Chapter XII or XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him a habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

**349.** Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion upon concluding a trial that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, he may record the opinion and, instead of passing sentence, submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who

has already given evidence in the case; and may call for and take any further evidence, and shall pass such sentence or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

e.g., he may order commitment to Sessions Court; I. L. R., 1 Mad., 289.  
Sec. I. L. R., 4 Bom., 240.

**350.** Whenever any Magistrate, after having heard the whole or any part of the evidence in an enquiry or trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the enquiry or trial:

Act X, 1872, s. 328, 329.  
Act IV, 1877, s. 156.  
Sec. 4 Cal., 432, and sec. 568, *infra*.

Provided that in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

Provided also that the High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, without appeal, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

**351.** Any person attending a Criminal Court, although not upon an arrest or summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed, and may be proceeded against as though he had been arrested or summoned.

Act X, 1872, s. 104.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

**352.** The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Act X, 1872, s. 187.  
Act X, 1875, s. 150.  
Act IV, 1877, s. 132.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case



that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

## CHAPTER XXV.

### OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Act X, 1872, s. 191, para. 1. 353. Except as otherwise expressly provided, all evidence to be taken evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Act X, 1872, s. 332. 354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Act X, 1872, s. 222, 333. 355. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned in section 261, clauses (b) to (k), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Act X, 1872, s. 334. 356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapter XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an

authenticated translation of such evidence in the language of the Court shall form part of the record.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes, and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall in the cases referred to in section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

359. Evidence taken under section 356 or 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his discretion take down, or cause to be taken down, any particular question and answer.

360. As the evidence of each witness taken under section 356 is completed, it shall be read over to him in the presence of

the accused if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, he may require his evidence as taken down to be interpreted to him in the language in which it was given, or in a language which he understands.

Act X, 1872,  
s. 340.

**361.** Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Act X, 1872,  
s. 335.  
Act IV, 1877,  
s. 115.

**362.** In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall be part of the record.

Act X, 1872,  
s. 338.  
Act IV, 1877,  
s. 115.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Act X, 1872,  
s. 341.

**363.** Every Sessions Judge or Magistrate recording the evidence of a witness shall record such remarks as he thinks material respecting the demeanour of such witness whilst under examination.

Act X, 1872,  
s. 346, paras.  
1, 2, 3 and 4.  
Act IV, 1877,  
s. 123.

**364.** Whenever the accused is examined by any Magistrate or by any Court other than a High Court established by Royal Charter, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language

in which he is examined, or, if that is not practicable, in the language of the Court, and such record shall be shown or read to him, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 243, 244 or 264.

**365.** Every High Court established by Royal Charter and the Chief Court of the Panjáb may from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

## CHAPTER XXVI.

### OF THE JUDGMENT.

**366.** The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

**367.** Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English, and shall contain the point or points for determination, the decision thereon, and the

Act VIII,  
1859, s.  
183.  
Act X, 1872,  
s. 211,  
para. 5, 462.

Act X, 1872,  
s. 463.  
Cf. Act X,  
1877, s. 200.  
Act X, 1872,  
s. 464,  
para. 1.  
Cf. Act VIII,  
1859, s. 185.

reasons for the decision, and shall be dated and signed by the presiding officer in open court at the time of pronouncing it.

Act X, 1872, s. 461, cl. 1. It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Act X, 1872, s. 461, cl. 2. When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative, according to section 72 of the same Code.

If it be a judgment of acquittal, it shall direct that the accused be set at liberty.

Act X, 1872, s. 287, para. 2. If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed :

Act X, 1872, ss. 255, last para., 464, para. 4. Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Act X, 1872, s. 321. 368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Act X, 1872, s. 464, para. 1, second sentence. 369. No Court when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error.

Act IV, 1877, s. 114. 370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate's judgment shall record the following particulars :—

- (a) the serial number of the case ;
- (b) the date of the commission of the offence ;
- (c) the name of the complainant (if any) ;
- (d) the name of the accused person, and (except in the case of an European British subject) his parentage and residence ;
- (e) the offence complained of or proved ;
- (f) the plea of the accused and his examination (if any) ;
- (g) the final order ;
- (h) the date of such order ; and

Act IV, 1877, s. 126. (i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Act XI, 1874, s. 41, para. 1. 371. The judgment shall be explained to the accused, and on his application a copy of the judgment or, when he so desires, a translation in his own language, if practicable, or

in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, a translation thereof into the language of the Court shall be added to such record.

373. In cases tried by the Court of Session, the Court shall forward a copy of its judgment (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

## CHAPTER XXVII.

### OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

375. If when such proceedings are submitted to the High Court the High Court thinks that additional evidence upon any point bearing upon the guilt or innocence of the convicted person is necessary, it may take such evidence itself or direct it to be taken.

Such evidence shall not be taken in the presence of jurors or assessors, and unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is taken.

The result of such evidence when it is not taken by the High Court shall be certified to such Court.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person :

*Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.*

Act X, 1872,  
s. 290.

**377.** In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be *made and signed* by at least two of them.

Act X, 1872,  
s. 271 B.  
(Act XI, 1874,  
s. 22.)

**378.** When any such case is heard before a Bench of Judges and such difference of opinion. Judges are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Act X, 1872, s.  
301, para. 1.

**379.** In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Act X, 1872,  
s. 18, 36.  
Act XI, 1874,  
s. 3.

**380.** When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(a) may confirm the sentence, or pass any other sentence which the lower Court might have passed, or

(b) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused; or

(d) if he thinks further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may direct such inquiry or evidence to be made or taken.

Unless the Sessions Court otherwise directs the presence of the convicted person may be dispensed with when such evidence is taken; and when the sentence has been submitted by an Assistant Sessions Judge, such evidence shall not be taken in the presence of jurors or assessors.

*The result of such evidence shall be certified to the Sessions Court.*

## CHAPTER XXVIII.

### OF EXECUTION.

**381.** When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

**382.** If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

**383.** Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined together with the accused, unless he is already confined in such jail.

**384.** Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

**385.** When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

**386.** Whenever an offender is sentenced to pay a fine, the Court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

**387.** Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

**388.** When an offender has been sentenced to fine only, and the Court issues a warrant under section 386, it may, instead of at once ordering him to be imprisoned under section 64 of the Indian Penal Code, release him



Execution.

Execution.

on his executing a bond with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond.

Act X, 1872, s. 307, last para. 389. The warrant may be issued either by any Judge or Magistrate who passed the sentence or by his successor in office.

Act X, 1872, s. 302A, cl. 2. 390. Where the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Act X, 1872, s. 310. 391. When the accused is sentenced to whipping in addition to imprisonment, in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence or, if an appeal be made within that time, until the sentence is confirmed by the appellate Court: but the whipping shall be inflicted as soon as possible after the expiry of the fifteen days or, in case of an appeal, as soon as possible after the receipt of the order of the appellate Court confirming the sentence.

Act X, 1872, s. 311, para. 3. The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Act X, 1872, s. 311, para. 1. 392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with such instrument, in such mode, and on such part of the person, as the Local Government directs; and in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Act X, 1872, s. 311, para. 2. 393. In no case, if the cat-o'-nine-tails be the instrument employed, shall whipping exceed one hundred and fifty lashes, or if the ratan be employed, shall such punishment exceed thirty stripes.

Act X, 1872, s. 312, para. 3. 394. The punishment of whipping shall not be inflicted, unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Act X, 1872, s. 312, paras. 1 and 2. 395. In any case in which, under section 394, a sentence of whipping is wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding three months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the

Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

395. In any case in which, under section 394, a sentence of whipping is wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding three months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purpose of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Suspensions,  
Remissions  
and Com-  
mutations  
of Sentences.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Act X, 1872,  
s. 317,  
proviso.

398. Nothing in section 396, or section 397, shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Act X, 1872,  
s. 318.

Act X, 1875,  
s. 112.

Act V of 1876

has not yet  
come into  
force any-  
where ex-  
cept—

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Government prescribes with regard to the discipline and training of persons confined therein.

All persons confined under this section shall be subject to the rules so prescribed.

Act X, 1872,  
s. 305.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

## CHAPTER XXIX.

### OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Act X, 1872,  
s. 322, para. 1.

401. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to furnish without delay a statement of the facts proved on the trial, and of any facts having reference to the propriety of granting or refusing the application.

Previous  
Acquittals  
or Convic-  
tions.

Act X, 1872,  
s. 322, para. 2.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

Act X, 1874,  
s. 34, cl. 2.

402. The Governor General in Council, or the Local Government, may without the consent of the person sentenced commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment, simple imprisonment.

## CHAPTER XXX.

### OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 237, or for which he might have been convicted under section 238.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 236, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that for which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Act X, 1872,  
s. 460.

Act X, 1875,  
s. 117.

Act IV, 1877,  
s. 113.

Act V, 1876,  
s. 13.

Form of plea  
under this  
section, N. W. P., 1875,  
p. 373.

Appeals.

Act X, 1872, **EXPLANATION.**—The dismissal of a complaint, the  
as. 147, stopping of proceedings under section 250, the dis-  
para. 2, charge of the accused, or any entry made upon a  
195, Expln., charge under section 274, is not an acquittal for  
215, Expl. the purposes of this section.  
2.

Act X, 1875,  
s. 14.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(f) A is charged by a Magistrate of the second class with and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the facts.

**PART VII.  
OF APPEAL, REFERENCE AND  
REVISION.**

**CHAPTER XXXI.**

**OF APPEALS.**

Act X, 1872, **404.** No appeal shall lie from any judgment  
as. 282, or order of a Criminal Court  
para. 2, unless otherwise pro- except as provided for by  
286, omit. vided, no appeal to lie. this Code or by any other  
ting the Il- law for the time being in force.  
lustrations.

Act IV, 1877, **405.** Any person whose application under section  
s. 180. 90 for the delivery of prop-  
Appeal from order re- erty or the proceeds of the  
jecting application for sale thereof has been rejected  
restoration of attached by any Court, may appeal to  
property. the Court to which appeals ordinarily lie from the  
sentences of the former Court.

Act X, 1872, **406.** Any person required by a Magistrate,  
s. 267. other than the District Ma-  
Appeal from order gistrate or a Presidency Ma-  
requiring security for gistrate, to give security for  
good behaviour. good behaviour under section 119 may appeal to  
the District Magistrate.

Act X, 1872, **407.** Any person convicted on a trial held by  
s. 266, omit- any Magistrate of the second  
ting "or to or third class, or any person  
a Magistrate sentenced by a Sub-divisional  
of that class Magistrate of the second  
empowered." class under section 349, may appeal to the District  
Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or if already presented shall be transferred to him. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

**408.** Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Provided that when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Sessions Court, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Sessions Court:

Provided also that any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

**409.** An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

**410.** Any person convicted on a trial held by a Sessions Judge, or Additional or Joint Sessions Judge, may appeal to the High Court.

**411.** Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

**412.** Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

**413.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

**Explanation.**—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

Appeals.

Act X, 1872,  
s. 274, para.  
1.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 261 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Act X, 1872,  
s. 274, para.  
2.

415. An appeal may be brought against any sentence referred to in section 413 or 414 by which any two or more of the punishments therein mentioned are combined; but not against any sentence which would not otherwise be liable to appeal, because the person convicted is ordered to find security to keep the peace.

Act XI, 1874,  
s. 24.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Act X, 1872,  
s. 274, para.  
3.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed on European British subjects under Chapter XXXIII.

Act X, 1872,  
s. 272, paras.  
1 and 2.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Act X, 1872,  
s. 271, last  
para.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall be admissible on a matter of law only.

Act X, 1872,  
s. 275.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury a copy of the heads of the charge recorded under section 367.

Act X, 1872,  
s. 277.

420. If the appellant is in jail, he may present his petition of appeal, and the copies accompanying the same, to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Act X, 1872,  
s. 274, paras.  
1 and 2.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily. Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal; and in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, the Court may, if it considers there is no sufficient ground for interfering, reject the appeal or may—

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, enhance or reduce the sentence, or (3) alter the nature of the sentence with or without such enhancement or reduction and with or without altering the finding;

(c) in an appeal from any other order, alter or reverse such order:

Provided that, if the appeal is from the sentence of a Magistrate acting otherwise than under section 30, the Appellate Court shall not inflict a greater punishment for the offence which, in the opinion of the Appellate Court, the appellant has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class:

Provided also that nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its decision or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the

Appeals.

Act X, 1872,  
ss. 62, 260,  
para. 2, 279,  
Act IV, 1877,  
s. 173.

Act XI, 1874,  
s. 27.

Act X, 1872,  
ss. 272, para.  
3, 280,  
Act IV, 1877,  
ss. 174, 179.

Act X, 1872,  
s. 284.

Act X, 1872, s.  
271, extended  
to appeals  
by the Crown.  
Act X, 1872,  
s. 299, para.  
3.

Act X, 1872,  
s. 299, paras.  
1 and 2.



District Magistrate, the certificate shall be sent through the District Magistrate.

The Court or Magistrate to which the High Court certifies its decision or order shall thereupon make such orders as are conformable to the decision of the High Court and, if necessary, the record shall be amended in accordance therewith.

Act X, 1872,  
s. 281, and  
s. 297, para.  
8, in case  
of Court of  
Revision.  
Act IV, 1877,  
s. 176.

**426.** Pending any appeal by a convicted person, the Appellate Court may, *for reasons to be recorded by it in writing*, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

When the appellant is ultimately sentenced to imprisonment, the time during which he is so released shall be excluded in computing the term of his imprisonment.

Act IV, 1877,  
s. 168, para.  
3, 1. 1. 12, 1.  
Calc., 281.)

**427.** When an appeal is presented under section 417, the High Court may *issue a warrant directing that* the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Act X, 1872,  
s. 282, paras.  
1, 3 and 4.  
Act IV, 1877,  
s. 176.

**428.** In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or may direct it to be taken by a Court of Session or a Magistrate.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the appellant or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

Act X, 1872,  
s. 271B. (Act  
XI, 1874, s.  
22.)

**429.** When the Judges composing the Court of appeal are equally divided, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Act X, 1872,  
s. 285.

**430.** Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 416 and Chapter XXXII.

1. L. R., 2  
Bom., 564.

**431.** Every appeal under section 417 finally abates on the death of the accused, and every other appeal under this chapter finally abates on the death of the appellant.

## CHAPTER XXXII.

### OF REFERENCE AND REVISION.

**432.** A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail or release him on bail to appear for judgment when called upon.

Act IV, 1877,  
s. 240.

**433.** When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Act IV, 1877,  
s. 241.

The High Court may direct by whom the costs of such reference shall be paid.

Direction as to costs.

**434.** When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Act X, 1875,  
s. 101.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail or, if the Judge thinks fit, be admitted to bail,

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment as the High Court thinks fit.

**435.** The High Court or any Court of Session or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of the proceedings of such inferior Court.

Act X, 1875,  
ss. 294, 295,  
para. 1.  
12 H.W. 256.

*If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.*

Act X, 1872, s. 520, Sec I. L.R., 2 Cal., 295. Orders made under sections 144 and 145 and proceedings under section 177 are not proceedings within the meaning of this section.

Act X, 1872, s. 296, paras. 2 and 3. (Act XI, 1874, s. 29.) 10 Ben., 289. **436.** When on examining the record of any case under section 435 or otherwise, the Court of Session or District Magistrate considers

that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may, instead of directing a fresh inquiry, direct him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged :

1 O'Kin. 93. Provided that the accused has had an opportunity of shewing cause to such Court or Magistrate why the commitment should not be made :

Act XI, 1874, s. 29. Provided also that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Act X, 1872, s. 298. (Act XI, 1874, s. 31) **437.** On examining any record under section 435 or otherwise, the Court of Session may direct the District Magistrate by himself or

by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 204, or into the case of any accused person who has been discharged.

Act X, 1872, s. 296, para. 1. **438.** The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

Act X, 1872, s. 297. L.R., 2 Cal., 113. A.L., 1, 139. Bom., 125; Nelson, 287. O'Kin. 84. **439.** In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428, and when the Judges composing the Court of revision are equally divided, the case shall be disposed of in manner provided by section 429.

This will empower High Court to reduce amount of forfeited recognizances ? 2 O.K. 408.

**440.** No party has any right to be heard either personally or by pleader before any High Court when exercising its powers of revision: *Provided that the High Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader: Provided also that no order shall be made to the prejudice of the accused unless he has had an opportunity of being heard in his own defence.*

**441.** When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

**442.** When a case is revised by the High Court under this chapter, it shall certify its decision or order in manner provided by section 425, and the Court or Magistrate to which the High Court so certifies its decision or order shall give effect thereto in manner provided by that section.

## PART VIII.

### SPECIAL PROCEEDINGS.

#### CHAPTER XXXIII.

#### CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

**443.** No Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

**444.** No Judge presiding in a Court of Session shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

**445.** Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person :

Provided that if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Act X, 1872, s. 74, para. 2. **446.** Notwithstanding anything contained in section 32, or section 34, no sentence which may be passed by Mufassal Magistrates. Magistrate other than a Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both.

Act X, 1872, ss. 76, para. 1, 438, para. 2. **447.** When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session or, in the case of a Presidency Magistrate, to the High Court.

Act XI, 1874, s. 12, para. 1. When the offence which appears to have been committed is punishable with death or transportation for life, the commitment shall be to the High Court.

Act XI, 1874, s. 12, para. 2. **448.** Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Act X, 1872, s. 76. **449.** Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

If at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Act X, 1872, s. 77. **450.** If the Judge of the Sessions Division within which the offence is ordinarily triable is not an European British subject, the case shall be reported by the committing Magistrate for the orders of the highest Court of Criminal appeal for the local area within which such division is situate.

**451.** In trials of European British subjects before a High Court or Court of Session, if before the first juror is called and accepted or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, or by a mixed set of assessors, not less than half the number of the jurors or assessors shall be Europeans or Americans, or both Europeans and Americans.

Act X, 1875, s. 36. **452.** In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such persons may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Act X, 1875, s. 37. Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

Act X, 1872, s. 88. **453.** When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's decision was wrong shall lie upon him.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall after such further enquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

Act X, 1872, s. 84. **454.** If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim

has been made before and disallowed by the committing Magistrate, it is not again made before the Court to which he is committed, he shall be held to have *relinquished his right* as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Act X, 1872,  
s. 85.

**455.** Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment or trial (as the case may be) shall not, by reason of such dealing, be invalid.

Trial under this chapter of person not an European British subject.

Act X, 1872,  
s. 81, para. 1, cl. 1.

**456.** When any European British subject is *unlawfully* detained in custody by any person, such *European British subject* or *any person on his behalf* may apply to the High Court

which would have jurisdiction over such *European British subject* in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Act X, 1872,  
s. 81, para. 1, cl. 2.

**457.** The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Procedure on such application.

Act X, 1872,  
s. 81, para. 2.

**458.** The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may from time to time direct.

Territories throughout which High Court may issue such orders.

Act XXII,  
1870, no. 2.

**459.** Unless there be something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace or on any Magistrate outside the Presidency towns not being an European British subject.

**460.** In every case *triable by jury or with the aid*

Jury for trial of Europeans or Americans. *of assessors in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.*

Act X, 1872,  
s. 231, para. 1, cl. 2.

American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

**461.** Whenever an European or American is charged before the Court of Session jointly with a person *not an European or American, and in compliance with a claim made under section 460 is tried by a jury or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, such person shall, if he so claims, be tried separately.*

Jury when European or American charged jointly with one of another race.

Act X, 1872,  
s. 242.

**462.** When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451, or section 460, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner *hereinbefore* prescribed, as many European and American jurors as are required for the trial.

Act X, 1872,  
s. 409, paras. 1, 2 & 3.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 277, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as possible, has been obtained:

*Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.*

Act X, 1872,  
s. 406, last clause.

**463.** Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of *this Code*.

Conduct of criminal proceedings against European British subjects.

Act X, 1872,  
s. 87.

## CHAPTER XXXIV.

### LUNATICS.

**464.** When any person accused of an offence before a Magistrate holding an inquiry or a trial appears to such Magistrate to be of unsound mind and consequently incapable of making

Act X, 1873,  
s. 423, 124, para. 3.  
Act IV, 1877,  
s. 194.



*Lunatics.*

his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination into writing.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

Act X, 1872, s. 425.  
Act X, 1875, s. 120. Procedure in case of person committed before Court of Session or High Court being lunatic.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the Court shall, in the first instance, try the fact of such unsoundness and incapacity and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

Act XI, 1874, s. 39. The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Act X, 1872, s. 426.  
Act X, 1875, s. 121.  
Act IV, 1877, s. 196. Release of lunatic pending investigation or trial.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or

Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a Lunatic Asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

1. L. R., 2 Cal., 356.

Act X, 1872, s. 427.  
Act X, 1875, s. 122.  
Act IV, 1877, s. 197. Resumption of inquiry or trial.

467. Whenever an inquiry or trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Act X, 1872, s. 428.  
Act X, 1875, s. 123.  
Act IV, 1877, s. 198. Procedure on accused appearing before Magistrate or Court.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case and, if the offence be triable exclusively by the Court of Session or High Court, send the accused for trial before the Court of Session or High Court, as the case may be.

When accused appears to have been insane.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a Lunatic Asylum, jail or other suitable place of safe custody.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the Lunatic Asylums or any two of them, if he is confined in a Lunatic Asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

473. If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making

*Lunatics.*

Act X, 1872, s. 424, paras. 1 and 2.  
Act IV, 1877, s. 195.

Act X, 1872, s. 429.  
Act X, 1875, s. 124.  
Act IV, 1877, s. 199.  
39 & 40 Geo. III, c. 94.  
Reg. v. Maonaughten, 10 Cl. & Fin. 200.

Act X, 1872, s. 430.  
Act X, 1875, s. 125.  
Act IV, 1877, s. 200.

Act X, 1872, s. 431.  
Act X, 1875, s. 127.  
Act IV, 1877, s. 202.

Act X, 1872, s. 432.  
Act X, 1875, s. 126.  
Act IV, 1877, s. 201.

Pr. VIII,  
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fences af-  
fecting Ad-  
ministration  
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his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

X, 1872,  
433.  
X, 1875,  
128.  
IV, 1877,  
203.

**474.** If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public Lunatic Asylum if he has not been already sent to such an Asylum, and in case it orders him to be transferred to an Asylum, may appoint a commission, consisting of a judicial and two medical officers.

And such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

X, 1872,  
434.  
X, 1875,  
129.  
IV, 1877,  
204.

**475.** Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be dealt with as a certificate under section 474.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

X, 1872,  
471, 477.  
X, 1875,  
135.  
IV, 1877,  
omit-  
last pa-  
1 Calc.,  
1 All.,  
183.  
1 & 15  
100.  
Kin. 217.

**476.** When any Civil, Criminal or Revenue Court is of opinion that there is ground for enquiring into any offence referred to in section 196, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for enquiry or trial to the District Magistrate, and may send the accused in custody, or take sufficient

security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such trial or enquiry.

Such Magistrate shall thereupon proceed according to law, and may transfer the enquiry or trial to some other competent Magistrate.

**477.** Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 196 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Act X, 1872,  
s. 472, paras.  
1 and 3.  
Reg. v. Noma,  
4 Ben. App.  
Crim. Jur.  
11.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

**478.** When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for enquiry, itself complete the enquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

Act X, 1872,  
s. 474, pa-  
ras. 1 and  
2.  
See I. L. R.,  
Bomb., 287.

For the purposes of an enquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such enquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

See I. L. R.,  
Bomb., 289.

**479.** When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Act X, 1872,  
s. 475.

**480.** When any such offence as is described in section 175, 178, 179, 180, or 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day\* may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not

Pollard's  
case, L. R. 2,  
P. C. 106.

exceeding two hundred rupees and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Act X, 1872,  
s. 435,  
paras. 2  
and 3.

**481.** In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult offered.

Act X, 1872,  
s. 436, paras.  
1 and 2.  
Act IV, 1877,  
s. 206.

**482.** If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than

in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any person is forwarded under this section shall proceed to hear the complaint against him in manner hereinbefore provided.

New. 13,  
Bengal  
App. 40.

**483.** A Registrar appointed under the Indian Registration Act, 1877, and, when the Local Government so directs, a Sub-Registrar appointed under the same Act, shall be deemed to be a Court within the meaning of sections 480 and 482.

Act X, 1872,  
s. 437.  
Act IV, 1877,  
s. 207.

**484.** When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Act X, 1872,  
ss. 356, 366.  
Act X, 1875,  
s. 89.  
Act IV, 1877,  
s. 141.

**485.** If any witness before a Court refuses to answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in

writing, sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document; after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or 482, and in the case of a Court established by Royal Charter shall be deemed guilty of a contempt.

**486.** Any person convicted by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

Sections 419, 420, 421, 426 and 428 shall apply to appeals under this section, and the Appellate Court may alter or reverse the finding or sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a conviction by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

**487.** Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any

person for any offence referred to in section 196, when such offence is committed before himself or in contempt of his authority, or is brought to his notice as such Judge or Magistrate in a judicial proceeding.

Nothing in section 476 or 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for enquiry to another Magistrate.

## CHAPTER XXXVI.

### OF THE MAINTENANCE OF WIVES AND CHILDREN.

**488.** If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable

Order for maintenance of wives and children.

Omitting  
warrant  
under  
hand  
seal.

Act X, 1872,  
s. 268.

New.

Act X, 1872,  
s. 473.  
I. L. R.,  
Bomb., 33  
1 All., 18  
625.  
7 Mad., XV  
App. Pro.  
See I. L. R.,  
Mad., 309.  
I. L. R., 14  
625.

Act X, 1872,  
s. 536.  
Act IV, 1877,  
s. 234.



State-Prisoners.

to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for each month's allowance remaining unpaid, to imprisonment for any term not exceeding one month:

1 O'Kin. 89.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

Act X, 1872,  
s. 537.  
Act IV, 1877,  
s. 235.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Act X, 1872,  
s. 538.  
Act IV, 1877,  
s. 236.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

CHAPTER XXXVII.

STATE-PRISONERS.

Ben. Reg. III,  
1818, s. 2.  
Mad. Reg. II,  
1819, s. 2.  
Bomb. Reg.  
XXV, 1827,  
preamble and  
section 1.

491. Whenever, for all or any of the reasons of State hereinafter mentioned, the Governor General in Council, the Governor of Fort St. George in Council, or the Governor of Bombay

State-Prisoners.

in Council, hereinafter called the Government, is of opinion that any person should be placed under personal restraint, without any immediate view to ulterior judicial proceedings, a warrant of commitment under the authority of the Government and under the hand of one of its Secretaries, shall be issued to the officer in whose custody such person (hereinafter called a State-prisoner) is to be placed.

The reasons above referred to are as follows:—

(a) the maintenance of the alliances formed by the British Government with foreign powers;

(b) the preservation of tranquillity in the territories of Native Princes and States entitled to its protection;

(c) the security of the British dominions from foreign hostility or internal commotion.

492. Such warrant shall authorize the detention of the State-prisoner therein mentioned in any fortress, jail or other place within British India.

493. The officer in whose custody any State-prisoner has been placed under this chapter or under any enactment repealed by this Code, shall forward, with such observations as he thinks necessary, to the Government under whose authority such prisoner was so placed, every representation which he may from time to time be desirous of submitting to such Government.

494. Every officer in whose custody any State-prisoner is placed shall, as soon after taking such prisoner into his custody as may be practicable, report to such Government whether the degree of confinement to which the State-prisoner is subjected seems likely to injure his health, and whether the allowance fixed for his support is adequate to the supply of his own wants and those of his family then with him according to their rank in life.

495. Whenever the Government for any of the reasons mentioned in section 491, considers it necessary to attach, without any previous decision of a Court of justice or other judicial proceeding, the lands of any proprietor which are situate outside the Presidency-towns, it shall direct the District Magistrate within the local limits of whose jurisdiction the lands are situate to attach such lands, and they shall be attached accordingly.

496. The lands so attached shall be held under the management of the Collector, and shall be administered in such manner as the Government may direct.



Such lands shall not be liable to be sold in execution of decrees of the Civil Courts, or for the realization of fines or otherwise, so long as they are so held under attachment, without the consent of the Government and the proprietor.

Bom. Reg. varies. But the whole or any part of the annual nett proceeds of such lands may, if the Government so directs, be applied to the satisfaction of the decrees of the Civil Courts against the proprietor.

Ben. Reg. III, 1818, s. 11. Procedure where Gov. direction such lands were attached, is of opinion that the circumstances which rendered necessary the attachment have ceased to operate, and that the management of the lands can be committed to the proprietor without public hazard or inconvenience, such Government shall direct the Collector to release the lands from attachment, to adjust the accounts of the collections during the period in which they have been superintended by Government and to pay over to the proprietor the nett proceeds of the lands which have accumulated during the attachment.

Act XXXIV, 1850, s. 1. Officers to whom warrant of commitment of State-prisoner may be directed. 498. The warrant of commitment of any State-prisoner under this chapter may be directed to the Superintendent of the jail in any Presidency-town, or to the Commandant of any fortress, or to the officer in charge of any jail or other place, in which it is deemed expedient that such State-prisoner be confined, in any part of British India; and such warrant shall authorize the detention of such State-prisoner in the jail, fortress or other place therein mentioned.

Act III, 1858, s. 5. Removal of State-prisoners from one place of confinement to another. 499. The Governor General in Council may order the removal of any State-prisoner confined under this chapter or any enactment repealed by this Code from any jail, fortress or place in which he may be confined to any other jail, fortress or place of confinement within British India.

Act XI, 1857, s. 6. Nothing in this chapter applies to European British subjects. 500. Nothing in this chapter applies to European British subjects.

#### CHAPTER XXXVIII.

##### DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Act X, 1872, s. 82. Power to issue directions of the nature of a habeas corpus. 501. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(a) that a person within the limits of its ordi-

nary original criminal jurisdiction be brought up before the Court to be dealt with according to law;

(b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor General in Council for trial, or to be examined touching any matter depending before such Court-martial or Commissioners respectively;

(e) that a prisoner within such limits be removed from one custody to another for the purpose of trial;

(f) that the body of a defendant within such limits may be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may from time to time frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to State-prisoners detained under Chapter XXXVII or under any enactment hereby repealed.

#### PART IX.

##### SUPPLEMENTARY PROVISIONS.

#### CHAPTER XXXIX.

##### OF THE PUBLIC PROSECUTOR.

502. The Governor General in Council or the Local Government may appoint in any case or for any class of cases in any local area one or more officers to be called Public Prosecutors. Act X, 1872, ss. 57, 58.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent to be Public Prosecutor for the purposes of such case. Act X, 1872, s. 202, part 2.

503. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under Public Prosecutor may plead in all Courts in cases under his charge. Act X, 1872, s. 60.

inquiry, trial or appeal; and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Pleaders, privately instructed, to be under his direction.

Act X, 1872,  
s. 61.

**504.** The Public Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person, and upon such withdrawal,

(a) if it is made before a charge has been framed, the accused shall be discharged;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

New.

Act X, 1872,  
s. 60.  
Act XI, 1874,  
s. 8.  
Act IV, 1877,  
s. 120.

**505.** Any Magistrate inquiring into or trying any case may permit any person other than an officer of police below the rank of Assistant District Superintendent to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

## CHAPTER XL.

### OF BAIL.

Act X, 1872,  
ss. 128, para.  
2, 144, para.  
2, 201, para.  
1, 388, 393.  
Act IV, 1877,  
ss. 70, 74.  
N.W. P.,  
1874, p. 371.

**506.** When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

Act X, 1872,  
ss. 128, para.  
2, 144, para.  
2, 389.  
Act IV, 1877,  
s. 71.

**507.** When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as

the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

**508.** The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

**509.** Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court as the case may be.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

**510.** As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

**511.** If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

**512.** All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other

Act X, 1872,  
ss. 390, 508.  
Act X, 1875,  
s. 136.  
I.L.R. 1 All.,  
151.

Act X, 1872,  
s. 391.  
Act IV, 1877,  
s. 72.

Act X, 1872,  
s. 394.  
Act IV, 1877,  
s. 73.

Act X, 1872,  
s. 392.  
Act IV, 1877,  
s. 75.

Act X, 1872,  
s. 395.  
Act IV, 1877,  
s. 76.

sufficient sureties, and if he fails to do so, may commit him to custody.

## CHAPTER XLI.

### OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

**513.** Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

*When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.*

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

**514.** If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

**515.** The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Such parties may appear before such Magistrate or officer by pleader, or if not in custody, in person,

and may examine, cross-examine and re-examine (as the case may be) the said witness.

**516.** Whenever, in the course of an inquiry or trial or other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

**517.** After any commission issued under section 513 or section 516 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition of such witness shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

**518.** In every case in which a commission is directed under section 513 or section 516, the inquiry, trial or other proceeding may be stayed for a specified time reasonably sufficient for the execution and return of the commission.

## CHAPTER XLII.

### SPECIAL RULES OF EVIDENCE.

**519.** The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

**520.** Any document purporting to be a report under the hand of the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

**521.** In proving the existence of circumstances as a defence under the second, third, fifth, sixth, seventh, eighth, ninth or tenth Excep-

Act X, 1877, s. 330, para.

As in sec. 51

Act X, 1877, s. 35, last para. Act X, 1877, s. 76, para.

N. Y. C. Proc. C. s. 708.

Act X, 1877, s. 23. Act X, 1877, s. 71. Act IV, s. 152.

Act X, 1877, s. 72. Act X, 1877, s. 153.

Act X, 1877, s. 152. Not in Act of 1877.

tion to section 499 of the Indian Penal Code, good faith shall be presumed until the contrary appears.

Act X, 1872, ss. 326, 515, last clause. **522.** In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered.

Act X, 1872, s. 327. **523.** If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions, and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, provided that the attendance of the deponent cannot be procured.

### CHAPTER XLIII.

#### PROVISIONS AS TO BONDS.

Act X, 1872, s. 399. **524.** When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Act X, 1872, ss. 396, 397, 398, paras. 1 & 2, 502, paras. 1 to 5 and 7, 508, 514. **525.** Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

Act XI, 1874, ss. 37, 44. **or, when the bond is for appearance before a Court, to the satisfaction of such Court,**

Act X, 1875, ss. 137, 138. **that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.**

Act IV, 1877, ss. 77, 78, 79, 228, 229. **If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.**

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

**526.** All orders passed under section 525 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

**527.** The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

### CHAPTER XLIV.

#### OF THE DISPOSAL OF PROPERTY.

**528.** When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence, or which has been produced as evidence in such inquiry or trial.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the committing Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been dismissed.

**EXPLANATION.**—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.



529. In lieu of itself passing an order under

Order may take form of reference to District or Sub-divisional Magistrate. *Act X, 1872, s. 420.* section 528, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned.

530. When any person is convicted of any offence which includes, or Payment to innocent purchaser of money found on prisoner. *30 & 31 Vic., c. 36, s. 10.* stolen property, and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has under this Code been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

531. Any Court of appeal, confirmation, reference or revision may direct any order under section 528 or 529 passed by a Court subordinate thereto to be stayed pending consideration by the former Court, and may modify, alter or annul such order. *Act X, 1872, s. 410. I. L. R., 3 Cal., 379. Court of appeal.*

532. On a conviction under the Indian Penal Code, section 292, 293, 501 or 502, the Court may order all the copies of the thing in respect of which the conviction was had, and which remain in the possession or power of the person convicted, to be destroyed. *Livingston, p. 480.*

The Court may in like manner, on a conviction under the Indian Penal Code, sections 272, 273, 274 or 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

533. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may order such person to be restored to the possession of the same. *Act X, 1873, s. 534. Act X, 1875, s. 142. Act IV, 1877, s. 238.* Power to restore possession of immoveable property.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

534. The seizure by any Police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained,

respecting the custody and production of such property.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such condition (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation. *Act X, 1872, s. 416.*

535. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate or of a Magistrate of the first class empowered by the Local Government in this behalf. *Act X, 1872, s. 417. Act X, 1877, s. 344.*

In the case of every order passed under this section, an appeal shall be allowed to the Court to which appeals against sentences of the Court passing such order would lie.

536. If the person entitled to the possession of such property is unknown or absent, and the property is of a perishable nature, or the Magistrate is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 534 and 535 shall, as nearly as may be, apply to the nett proceeds of such sale. *Act X, 1872, s. 415, para. 2.* Power to sell perishable property.

## CHAPTER XLV.

### OF THE TRANSFER OF CRIMINAL CASES.

537. Whenever it is made to appear to the High Court— *Act X, 1873, s. 64. Act X, 1875, s. 147.* High Court—

(a) that a fair and impartial enquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory enquiry into or trial of the same, or

(d) that an order under this section will tend to the general convenience of the parties or witnesses,

it may order—

(1) that any offence be enquired into or tried by any Court not empowered under sections 178 to 185, but in other respects competent to enquire into or try such offence;

Transfer of  
Criminal  
Cases.

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 268, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

L. R. 1  
Cal., 229. Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

Chb. 88. When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

IV, 1877,  
s. 181. Every accused person making any such application shall give to the

Notice to Public Prosecutor of application under this section.

Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 198.

X, 1872,  
s. 64A. (Act  
II, 1874,  
s. 11.) Power of Government of India to transfer criminal cases and appeals. Whenever it appears to the Governor General in Council that the transfer next hereinafter mentioned will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

X, 1872,  
s. 44, last  
para. 1. 539. Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

X, 1872,  
s. 48. The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

## CHAPTER XLVI.

### OF IRREGULAR PROCEEDINGS.

540. If any Magistrate not empowered by law Act X, 1872, ss. 32, 134, cl. (9). Nelson, p. 54. Irregularities which do to do any of the following things, namely:—

(a) to issue a search-warrant, under section 99;

(b) to order, under section 156, the police to investigate an offence;

(c) to hold an inquest under section 177;

(d) to issue process, under section 187, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits; or

(e) to take cognizance of an offence under section 192, clause (a) or clause (b);

(f) to transfer a case under section 193;

(g) to tender a pardon under section 337 or section 338.

(h) to sell property under section 535 or section 536;

(i) to withdraw a case and try it himself under section 539;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings. 541. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely):—

(a) passes a sentence under section 349, on proceedings recorded by another Magistrate;

(b) takes cognizance under section 192, clause (c), of an offence;

(c) attaches and sells property under section 89;

(d) tries an offender summarily;

(e) decides an appeal;

(f) calls under section 435 for proceedings;

(g) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(h) revises under section 526 an order passed under section 525;

(i) demands security to keep the peace;

(j) discharges bonds to keep the peace;

(k) demands security for good behaviour;

(l) discharges a person lawfully bound to be of good behaviour;

(m) makes an order under section 134 as to a local nuisance;

(n) issues an order under section 145;

(o) prohibits under section 144 the repetition or continuance of a public nuisance;

(p) makes an order under Chapter XII; or

(q) makes an order for maintenance; his proceedings shall be void.

542. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong Sessions Division, District, Sub-division or other local area, unless it appears that such error occasioned a failure of justice.

Proceedings in wrong place.

543. If any Magistrate or other authority purporting to exercise powers duly conferred, but not being so conferred, commits an accused person to take his trial before a Court of

Act X, 1872, s. 33.  
Act X, 1875, s. 25.

Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been prejudiced, unless objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority during the inquiry and before the order of commitment.

If such Court considers that the accused was prejudiced, or if such objection as aforesaid was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Act X, 1872,  
s. 846, last  
para.

**544.** If any Court before which a confession or other statement of an accused person recorded under section 165 or 364 is tendered in evidence

finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded: and unless the error injures the accused as to his defence on the merits, it shall not affect the admissibility of such statement.

Act X, 1872,  
s. 86.

**545.** An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding: although it appears that he was aware of the rights claimable under this Code by him as such subject.

Act X, 1872, s.  
216, Expln.  
1.

**546.** No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

Act X, 1872,  
s. 216, Ex-  
plan. II.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be recommenced from the point immediately after the framing of the charge.

Act X, 1872,  
s. 239, Expln.  
& rule 409.

**547.** If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground be invalid.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the

objection is taken before the Court records its finding.

Act X, 1872,  
ss. 203, para.  
3, 283, para.  
1, 300, 404,  
paras. 6 and  
7. (Act XI,  
in charge or proceedings.  
1874, s. 41.)  
11 & 12 Vic.  
c. 43, s. 9.

**548.** Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII

or on appeal or revision on account—  
of any error, omission or irregularity in the com-  
plaint, summons or charge, judgment or other pro-  
ceedings before or during trial, or

Act IV, 1877,  
s. 31, 178,  
1 Bom. 238.

of the want of any sanction required by section 196, or  
of any misdirection in any charge to a jury, unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

Act IV, 1877,  
s. 186, para.  
6.

**549.** No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

## CHAPTER XLVII.

### MISCELLANEOUS.

**550.** Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge or Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

**551.** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness; or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person, if his evidence appears to it essential to the just decision of the case.

**552.** Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

**553.** Notwithstanding anything contained in the Prisoners Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

**554.** When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

**555.** Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any enquiry, trial or other proceeding before such Court under this Code.

**556.** Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal or revision a sentence of fine, or a sentence of which fine forms a part, the Court may when passing judgment order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

Act X, 1872,  
s. 149.

Act X, 1872,  
s. 187.

Act X, 1872,  
s. 80.

Act IV, 1872,  
ss. 85, 134.

Act X, 1872,  
s. 88.

Act IV, 1872,  
s. 139.

Act X, 1872,  
s. 70.

Act X, 1872,  
s. 422.

Act X, 1872,  
s. 421.

Act X, 1872,  
s. 116.

Act IV, 1872,  
s. 243.

Act X, 1872,  
s. 308, para.  
1, 2 and 3.

Act X, 1872,  
s. 106.

Act IV, 1872,  
s. 136.



If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Act X, 1872, s. 308, last para. Act X, 1875, into account in subsequent s. 106, last suit. 22 South. W. R., Civil Rulings, 336.

**557.** At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 556.

**558.** Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Act X, 1872, ss. 201, 276. Act XI, 1874, s. 25. Act X, 1875, s. 13. Act IV, 1877, s. 170.

**559.** If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Ben. Reg. XX, 1825.

**560.** When any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Discipline and Regulation Act, 1879, section forty-one, to be tried by a Court-martial, such Magistrate shall, unless the Governor General in Council otherwise generally or specially directs, deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being brought for trial before a Court-martial.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Act X, 1872, s. 137.

**561.** Police-officers superior in rank to officers in charge of a Police-station may exercise the same powers, within the local area for which they are appointed, as may be exercised by officers in charge of Police-stations within the limits of their respective stations.

Act IV, 1877, s. 17.

**562.** Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge or government of such child, and may compel compliance with such order, using force if necessary.

Act IV, 1877, s. 242, omitting provision as to son groundlessly given complaints, in charge in Presidency which is town. made else-where.

**563.** Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to

the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

**564.** With the previous sanction of the Governor General in Council, the High Court at Fort William, and with the previous sanction of the Local Government, any other High Court established by Royal Charter, may from time to time make rules for the inspection of the records of subordinate Courts.

With the previous sanction of the Local Government, every High Court not established by Royal Charter may from time to time—

(a) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it;

(b) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts; and

(c) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the official Gazette.

**565.** Subject to the power conferred by section 564, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

**566.** The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

**567.** All powers conferred by this Code on the Local Government may be exercised from time to time as occasion requires.

**568.** The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force and to all miscellaneous criminal cases and proceedings instituted in any Court.

If any doubt arises as to the procedure to be followed in any case or class of cases under this section, the Court shall be guided by such rules consistent with this Code as the High Court may from time to time make in this behalf.



**SCHEDULE I.**  
**ENACTMENTS REPEALED.**

(a).—*Statutes.*

Year, reign and chapter.	Title.	Extent of repeal.
13 Geo. III, chapter 63	An Act for establishing certain Regulations for the better management of the affairs of the East India Company as well in India as in Europe.	Section 38.

(b).—*Acts.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840 ...	Execution of process ...	So much as has not been repealed.
XXXIV of 1850 ...	State-Prisoners ...	The whole.
III of 1858 ...	State-Prisoners ...	So much as has not been repealed.
XLV of 1860 ...	Penal Code ...	The illustrations to section 214.
Act V of 1861 ...	Police Act ...	Sections 6 and 24. Section 35, down to and including the words "Provided that." Sections 37 to 40, both inclusive.
XVIII of 1862 ...	Criminal Procedure, Supreme Courts ...	So much as has not been repealed.
II of 1869 ...	Justices of the Peace ...	So much as has not been repealed.
XXII of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjab Laws ...	So far as it relates to Bengal Regulations III of 1818 and XX of 1825.
X of 1872 ...	The Code of Criminal Procedure ...	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure	The whole.
XV of 1874 ...	Laws Local Extent ...	So far as it relates to Acts XXXIV of 1850 and III of 1858, and to Bengal Regulations III of 1818 and XX of 1825, Madras Regulation II of 1819, and Bombay Regulation XXV of 1827.
X of 1875 ...	High Courts' Criminal Procedure ...	The whole Act, except section 144 and so much of section 146 as relates to informations.
XVII of 1875 ...	Burma Courts ...	So much of section 98 as relates to Bengal Regulation III of 1818.

SCHEDULE I—*continued*.  
ENACTMENTS REPEALED—(*continued*).  
(*b*).—*Acts*, *continued*.

Number and year.	Subject.	Extent of repeal.
XX of 1875 ...	Central Provinces Laws ...	So far as relates to Bengal Regulations III of 1818 and XX of 1825. Ditto. The whole Act except section 57. Chapter III.
XVIII of 1876 ...	Oudh Laws ...	
IV of 1877 ...	Presidency Magistrates ...	
XXI of 1879 ...	Extradition ...	

(*c*).—*Regulations*.

Number and Year.	Subject.	Extent of repeal.
Bengal Regulation III of 1818.	State-Prisoners ...	So much as has been repealed. Ditto. Ditto. Ditto.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial...	
Madras Regulation II of 1819.	State-Prisoners ...	
Bombay Regulation XXV of 1827.	Ditto ...	
III of 1872 ...	Sontal Parganas Settlement ...	So far as relates to Acts XXXIV of 1850, III of 1858 and X of 1872, and to Bengal Regulation III of 1818.
IX of 1874 ...	Arakan Hills District Laws ...	
II of 1877 ...	Ajmer Laws ...	So far as relates to Bengal Regulations III of 1818 and XX of 1825.

## SCHEDULE II.

## TABULAR STATEMENT OF OFFENCES.

**EXPLANATORY NOTE.**—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

## CHAPTER V.—OF ABETMENT.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	By the Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.

111	When one act is abetted and a different act is done, subject to the proviso.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	The same punishment as for the offence intended to be abetted.	Ditto.
	When an effect is caused by the act abetted different from that intended by the abettor.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	The same punishment as for the offence committed.	Ditto.
113	If abettor is present when offence is committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
114	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
115	If an act which causes harm be done in consequence of the abetment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	According as the offence abetted is bailable or not.	...	Ditto	...	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.



SCHEDULE II—continued.  
CHAPTER V.—OF ABETMENT—(concluded).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
117	Abetting the commission of an offence by the public, or by more than ten persons.	May arrest without warrant if the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment of either description for 3 years, or fine, or both.	By the Court by which the offence abetted is triable.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed ..	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	Ditto	Ditto	According as the offence abetted is bailable or not.	Ditto	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the offence be punishable with death or transportation.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 10 years.	

If the offence be not committed ...		Ditto	...	Ditto	...	According as the offence abetted is bailable or not.	Ditto	...	Imprisonment extending to quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto	...	Ditto	...	Ditto	Ditto	...	Ditto	Ditto.
	If not committed ...	Ditto	...	Ditto	...	Ditto	Ditto	...	Ditto	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

	Shall not arrest without warrant.	Warrant	...	Not bailable ...	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Ditto	...	Ditto	Ditto	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.
121A	Conspiring to commit certain offences against the State.	Ditto	...	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto	...	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto	...	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.

## SCHEDULE II—continued.

## CHAPTER VI.—OFFENCES AGAINST THE STATE—(concluded).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Shall not arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.

129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

## CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	...	Warrant	...	Not bailable	...	Not compoundable.	...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Death, or transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.



SCHEDULE II—continued.  
CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—(concluded).

1 Section.	2 Offence.	3 Whether the police may arrest with- out warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether com- poundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
135	Abetment of the desertion of an officer, soldier or sailor.	May arrest without war- rant.	Warrant ...	Bailable	Not compound- able.	Imprisonment of either de- scription for 2 years, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
137	Deserter concealed on board mer- chant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without war- rant.	Summons ...	Ditto	Ditto	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in con- sequence.	May arrest without war- rant.	Warrant ...	Ditto	Ditto	Imprisonment of either de- scription for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto	Summons ...	Ditto	Ditto	Imprisonment of either de- scription for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

## CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

	Being member of an unlawful assembly.	May arrest without warrant.	Summons	Bailable	...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
143								
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto	Warrant	Ditto	...	Ditto	...	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto	Ditto	Ditto	...	Ditto	...	Ditto.
147	Rioting.	Ditto	Ditto	Ditto	...	Ditto	...	Ditto.
148	Rioting armed with a deadly weapon.	Ditto	Ditto	Ditto	...	Ditto	...	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	...	Ditto	The same as for the offence ...	By the Court by which the offence is triable.
150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto	...	Ditto	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.

**SCHEDULE II—continued.**  
**CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—(concluded).**

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed ...	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Presidency Magistrate or Magistrate of the first or second class.

155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto	...	Ditto	...	Ditto	...	Fine	...	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	...	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
	Or to go armed	Ditto	...	Warrant	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	...	Ditto.
160	Committing affray	Shall not arrest without warrant.	...	Summons	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	...	Any Magistrate.

## CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons	...	Bailable	...	Not committable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
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**SCHEDULE II—continued.**  
**CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—(concluded).**

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Ditto.

167	Public servant framing an incorrect document with intent to cause injury.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant ...	May arrest without warrant.	...	Warrant	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto	...	Summons	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

## CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absoconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons	...	Bailable	...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

**SCHEDULE II—continued.**  
**CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(continued).**

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If the order require personal attendance, &c., in a Court of Justice.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.

Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Court in which the offence is committed, subject to the provisions of Chapter XXXV, or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
If the document is required to be produced in or delivered to a Court of Justice.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
If the notice or information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
Knowingly furnishing false information to a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
If the information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

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**SCHEDULE II—continued.**  
**CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(continued).**

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without war- rant.	Summons ...	Bailable ...	Not compound- able.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, sub- ject to the pro- visions of Chap- ter XXXV of this Code, or, if not com- mitted in a Court, a Presi- dency Magis- trate or Magis- trate of the first or second class. Ditto.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.
181	Knowingly stating to a public ser- vant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either de- scription for 3 years, or fine, or both.	Court of Session, Presidency Ma- gistrate or Magistrate of the first class.

182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
188	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction or annoyance or injury to persons lawfully employed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

**SCHEDULE II—continued.**  
**CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—(concluded).**

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If such disobedience causes danger to human life, health or safety, &c.	Shall not arrest without warrant.	Summons ...	Bailable	Not compoundable.	Imprisonment for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

**CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.**

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.

194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	...	Ditto	...	Not bailable ...	Ditto	...	Transportation for life, or rigorous imprisonment for 10 years and fine.	...	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto	...	Ditto	...	Ditto	Ditto	...	Death, or as above	...	Ditto.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment for more than seven years.	Ditto	...	Ditto	...	Ditto	Ditto	...	The same as for the offence ...	...	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	...	Ditto	...	According as the offence of giving such evidence is bailable or not.	Ditto	...	The same as for giving or fabricating false evidence.	...	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto	...	Ditto	...	Bailable	Ditto	...	The same as for giving false evidence.	...	Ditto.
198	Using as a true certificate one known to be false in a material point.	Ditto	...	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto.
199	False statement made in any declaration which is by law received as evidence.	Ditto	...	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto.
200	Using as true any such declaration known to be false.	Ditto	...	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto.



SCHEDULE II—continued.  
CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

203	Giving false information respecting an offence committed.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years and fine.	Ditto.

## SCHEDULE II—continued.

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
211	False charge of offence made with intent to injure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If offence charged be capital, or punishable with transportation for life, or imprisonment for a term exceeding 7 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender, if the offence be capital	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

If punishable with imprisonment for 1 year and not for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
213 Taking gift, &c., to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
If punishable with transportation for life or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
If with imprisonment for less than 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
214 Gift made to cause restoration of property in consideration of screening offender, if the offence be capital.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.



## SCHEDULE II—continued.

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant ...	Bailable	Not compoundable.	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.

	If with imprisonment for 1 year, and not for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment for quarter of the longest term, and of the description, provided for the offence, or fine, or both.	By a Presidency Magistrate or Magistrate of the first class, or by the Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save persons from punishment, or property from forfeiture.	Shall not arrest without warrant.	...	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, with or without fine.	Ditto.

## SCHEDULE II—continued.

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(continued).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If punishable with transportation for life, or imprisonment for 10 years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable ...	Ditto ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation for life, or imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.

223	If under sentence of imprisonment for less than 10 years.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Escape from confinement negligently suffered by a public servant.	Ditto	...	Summons	...	Ditto	...	Ditto	...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	...	Warrant	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Imprisonment of either description for 3 years and fine	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.



SCHEDULE II—continued.  
CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—(concluded).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If under sentence of death ...	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation ...	Ditto ...	Ditto ...	Not bailable ...	Ditto ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	By the Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Court in which the offence is committed, subject to the provisions contained in Chapter XXV of this Code.

229	Personation of a juror or assessor ...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
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## CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant	Not bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin ...	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Court of Session.

SCHEDULE II—continued.  
CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(continued).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
236	Abetting in India the counterfeiting out of British India of coin.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	The punishment provided for abetting the counterfeiting of such coin within British India.	Court of Session.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.

241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Persons employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.



SCHEDULE II—continued.  
CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—(concluded).

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	May arrest without warrant.	Warrant ...	Not bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.

255	Counterfeiting a Government stamp.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
258	Sale of counterfeit Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause wrongful loss to Government.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—continued,  
CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
264	Fraudulent use of false instrument for weighing.	Shall not arrest without war- rant.	Summons ...	Bailable	... Not compound- able.	Imprisonment of either de- scription for 1 year, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto	Ditto ...	Ditto	Ditto ...	Ditto ...	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto	Ditto ...	Ditto	Ditto ...	Ditto ...	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto	Ditto ...	Ditto	Ditto ...	Ditto ...	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without war- rant.	Summons ...	Bailable	... Not compound- able.	Imprisonment of either de- scription for 6 months, or fine, or both.	Presidency Ma- gistrate or Ma- gistrate of the first or second class.
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